

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

[2025] SGIPOS 5

Trade Mark No. 40202116521X

IN THE MATTER OF A TRADE MARK APPLICATION

IN THE NAME OF

MURRAY COLIN CLARKE

... Applicant

AND

AN OPPOSITION BY

TNSG BIOTECH CO LTD

... Opponent

GROUND OF DECISION

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TNSG Biotech Co Ltd
v
Murray Colin Clarke

[2025] SGIPOS 5

Trade Mark No. 40202116521X
IP Adjudicator David Llewelyn
22 July 2025

22 October 2025

IP Adjudicator David Llewelyn:

Introduction

1 At the start of a cross-border commercial relationship there is often a tendency to overlook the need to set out clearly in writing the rights and obligations of both sides, including the ownership and use of trade marks, just to avoid or reduce the risk of possible misunderstandings or conflict in the future. This can have the consequence that sorting out such conflict when it arises later is far harder, and more expensive in both time and money, than it need be.

2 Murray Colin Clarke (“Applicant”) applied to register the trade mark

童年時光
童年时光

¹ under Trade Mark No. 40202116521X

¹ In the application, the translation of the Application Mark was given as “childhood time” and the transliteration was given as “tong nian shi guang”. The first mark in the series is in

(“Application Mark”) on 12 July 2021 in Classes 5, 30 and 35.

3 TNSG Biotech Co., Ltd (“Opponent”) filed its Notice of Opposition to oppose the registration of the Application Mark on 28 February 2022.

4 The Opponent elected to have a determination on the papers only while the Applicant requested a hearing. This opposition was heard on 22 July 2025 with only the Applicant in attendance.

Grounds of opposition

5 If enough mud is thrown at a wall, some will stick. To the neutral observer, this would seem to be the primary basis on which some oppositions to the registration of a trade mark are conducted. It is particularly pernicious when, as in the present proceedings, the mud-throwing is in support of a number of different grounds of opposition that are then dropped in the course of the process, leaving a single one: bad faith.

6 In these circumstances the Applicant is forced to decide whether to keep spending time and money cleaning away as much as possible of the mud that is thrown during the process, lest too much sticks. But in this area the law provides the Applicant with some protection, for the burden of proof is on the Opponent: a bit of stuck mud is not enough, especially where the ground of opposition is one of bad faith. This is not a ground that should be relied on lightly and must be proved with cogent evidence.

traditional Chinese; the second mark in the series comprises the same words written in simplified Chinese.

7 When commencing this opposition, the Opponent initially sought to rely on Sections 8(2)(b), 8(4)(b)(i), 8(4)(b)(ii) as well as 7(6) of the Trade Marks Act 1998 (the “Act”).

8 However, after the close of evidence, the Opponent chose to rely solely on Section 7(6) of Act in this opposition, abandoning all other grounds. Such conduct has resulted in much wastage of resources, not least because the Opponent has included in its pleadings and statutory declarations evidence that is no longer strictly relevant as it is in support of grounds other than bad faith (and the Applicant has had to incur costs to address such evidence), but also because it requires the hearing officer to sieve through all the evidence submitted to discern which is relevant, and which is not.

Opponent’s evidence

9 The Opponent’s evidence comprises the following:

- (a) a Statutory Declaration made by Guilin Guo, legal representative of the Opponent, on 30 May 2023 in the People’s Republic of China (“Guo’s 1st SD”);
- (b) a Statutory Declaration made by Peng Zhang, a researcher at the Institute of Law, Chinese Academy of Social Sciences and the Secretary General at the Intellectual Property Center of Chinese Academy of Social Sciences, on 19 June 2023 in the People’s Republic of China;
- (c) a supplementary Statutory Declaration made by the same Guilin Guo, on 12 July 2023 in the People’s Republic of China (“Guo’s 2nd SD”);

(d) a Statutory Declaration in Reply made by Siew Feng Qi, legal representative of the Opponent, on 16 October 2024 in Hong Kong Special Administrative Region, the People’s Republic of China;

(e) a Statutory Declaration in Reply made by Li Zhanke, legal representative of the Opponent, on 16 October 2024 in the People’s Republic of China; and

(f) a Statutory Declaration in Reply made by the same Guilin Guo, on 17 October 2024 in the People’s Republic of China (“Guo’s 3rd SD”).

Applicant’s evidence

10 The Applicant’s evidence comprises the following:

(a) a re-executed Statutory Declaration made by Murray Colin Clarke, the Applicant, on 16 May 2024 in California, United States of America (“Clarke’s 1st SD”);

(b) a supplementary Statutory Declaration made by the same Murray Colin Clarke, on 16 May 2024 in California, United States of America (“Clarke’s 2nd SD”); and

(c) a supplementary Statutory Declaration made by the same Murray Colin Clarke, on 19 March 2025 in California, United States of America (“Clarke’s 3rd SD”).

Applicable law and burden of proof

11 There is no overall onus on the Applicant before the Registrar during examination or in opposition proceedings. The undisputed burden of proof in the present case falls on the Opponent.

Background facts

12 The Applicant is a paediatrician in the United States who has been formulating nutritional and dietary supplements for children since 1996. In 1997, the Applicant founded Biozeal, LLC (trading as ChildLife Essentials) (“Biozeal”), a company incorporated in the United States and in the business of overseeing the production and distribution of nutritional and dietary supplement products under the brand “ChildLife” (“ChildLife Products”).²

13 It is undisputed that:

(a) ChildLife Products have been sold to consumers in more than 25 countries, including consumers in Singapore since at least 2003;³

(b) ChildLife Products have been marketed under one or more of the following trade marks, which have been registered around the world and in particular in Class 5 for nutritional and dietary supplements:⁴

(i) “CHILDLIFE”;

(ii) “CHILDLIFE ESSENTIALS”; and

(iii)  (“Heart Device”).

14 The Opponent company was incorporated on 26 March 2010 under the laws of the People’s Republic of China, in the business of sourcing, distributing, promoting and selling the goods of foreign manufacturers in China and other markets with Chinese-literate communities.⁵

² Applicant’s Written Submissions, at [5].

³ Applicant’s Written Submissions, at [6].

⁴ Applicant’s Written Submissions, at [14].

⁵ Opponent’s Written Submissions, at [4].

15 In summary, the parties contest the other's 'entitlement' to the Application Mark. However, as this is an opposition brought by the Opponent, all that needs to be decided is whether the Opponent is able to establish on the evidence that the Applicant acted in bad faith in applying for the Application Mark when he was not entitled to do so.

16 The Opponent's case may be summarised as follows:⁶

- (a) it owns the “童年时光” brand, used in relation to baby care products and services;
- (b) the name “童年时光” was coined by the co-founders of the Opponent, Ms Guo Zhijuan and Mr Guilin Guo;
- (c) the Chinese name of the Opponent is “南京童年时光生物技术有限公司”⁷, the Chinese words “童年时光” being identical to the Application Mark;
- (d) the letters “TNSG” in the Opponent's name are derived from and an abbreviation of the words “童年时光”, being the first letters of the words “Tong Nian Shi Guang”, a transliteration of the Application Mark;
- (e) it first applied to register the “童年时光” mark in China in Classes 5 and 30 on 20 April 2010, and currently owns registrations for

⁶ Opponent's Statement of Grounds, at [1] – [6], [8], [10]; Opponent's Written Submissions, at [10], [15]; Guo's 1st SD, at [12] – [15], [27]; Clarke's 1st SD, at [59].

⁷ Guo's 1st SD at [12] and Exhibit A4 state the English name as TNSG Biotech Co., Ltd. Exhibit A4 is an Enterprise Credit Information Publicity Report by the National Enterprise Credit Information Publicity System and its English translation.

the “童年时光” mark in Classes 5, 30 and/or 35 in China, Hong Kong, U.S. and the European Union;

(f) it has invested and expended substantial resources, finances and efforts over the years in marketing and promoting the “童年时光” brand, which is now a leading brand in the baby care industry that has won multiple awards;

(g) on 27 April 2011, it was appointed as sub-distributor of the ChildLife Products by Asambly Chemicals Co., Ltd (“Asambly”), another Chinese company with whom GDS Group, Inc. (“GDS”), Biozeal’s official worldwide distributor of the ChildLife Products at the material time, had a distribution agreement;

(h) on 1 June 2012, the distribution agreement between GDS and Asambly was terminated;

(i) between 1 February 2013 and 23 March 2021, the Opponent distributed certain ChildLife Products in mainland China, Hong Kong and Macau pursuant to distribution agreements it entered into directly with Biozeal on 1 February 2013 (“2013 Distributorship Agreement”) and 1 January 2018 (“2018 Distributorship Agreements”);

(j) it distributed the ChildLife Products as “co-branded products”, ie, the Opponent would display its own Chinese “童年时光” brand alongside or in proximity with the foreign manufacturers’ original English trade marks on the co-branded products (instead of replacing them with Chinese versions of the English trade marks or translations), to inform consumers that the goods were sourced directly from the

foreign manufacturer and not locally-manufactured versions of the products;

(k) after terminating the 2018 Distributorship Agreements on 23 March 2021, the Applicant filed for the Application Mark on 12 July 2021 without the Opponent’s knowledge, authorisation or consent and in so doing, had acted in bad faith.

17 As for the Applicant, he argues that:⁸

(a) in August 2009, he was approached by one Mr Lu Qidong (“Mr Lu”), in his capacity as Marketing Manager of High Hope International Group (“HHIP”) (the parent company of Asambly), who expressed interest in marketing some of the ChildLife Products in mainland China and exploring the possibility of cooperation with Biozeal;

(b) in or around December 2009, as they were looking to appoint a distributor in China for ChildLife Products, GDS invited Mr Lu to submit a marketing plan and the purchase target for the first year for GDS’ consideration;

(c) following an extended exchange of emails, a meeting was held on 2 February 2010 between GDS and Mr Lu and his colleagues from Asambly (who Mr Lu informed GDS would be responsible for handling the project), at which Mr Lu presented HHIP’s marketing plan for the ChildLife Products;

⁸ Applicant’s Counter-statement, at [5], [7], [9], [12], [16]; Applicant’s Written Submissions, at [28], [43], [49] – [53]; Clarke’s 1st SD, at [44] – [45].

- (d) Asambly was eventually made exclusive distributor of the ChildLife Products in mainland China, and GDS and Asambly entered into a distributorship agreement on 1 April 2010;
- (e) the Opponent was incorporated in anticipation of the distributorship arrangement, and specifically with the objective of assisting with the marketing and distribution of the ChildLife Products;
- (f) without the knowledge and authorisation of the Applicant, on 20 April 2010, the Opponent applied to register not just the “童年时光” mark in China in Classes 5 and 30, but also a “childlife” stylised word mark in Class 30;
- (g) the Opponent was appointed by Asambly as sub-distributor of the ChildLife Products sometime in 2010 (and not 27 April 2011 as alleged by the Opponent);
- (h) the “童年时光” mark is the Chinese version of the Applicant’s English “CHILDLIFE” mark, adopted by Biozeal in Chinese-speaking markets (ie, there was no co-branding arrangement between the Opponent and GDS and/or Biozeal);
- (i) the Applicant has the right to apply for and register the Application Mark (which includes the “童年时光” mark);
- (j) contrary to the Opponent’s assertions, it is the Opponent who has acted in bad faith by applying for and/or registering the “童年时光” mark in various countries without Biozeal’s authorisation (for the avoidance of any doubt, this is not a point I need to decide in the present proceedings).

The law under Section 7(6)

18 Section 7(6) of the Act reads:

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

19 The legal principles underlying the law on bad faith are not disputed, and were set out by the Court of Appeal in *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203 (“*Valentino*”):

(a) An allegation of bad faith is a serious one, and should not be made unless it can be fully and properly pleaded and sufficiently supported by evidence. It must be distinctly proved, and this will rarely be possible by a process of inference (*Valentino* at [30]).

(b) The term ‘bad faith’ embraces not only actual dishonesty but also dealings which would be considered as commercially unacceptable by reasonable and experienced persons in a particular trade, even though such dealings may otherwise involve no breach of any duty, obligation, prohibition or requirement that is legally binding upon the registrant of the trade mark (*Valentino* at [28]).

(c) The test for determining the presence of bad faith contains both a subjective element (*viz*, what the particular applicant knows) and an objective element (*viz*, what ordinary persons adopting proper standards would think). Bad faith as a concept is context-dependent and its existence (or absence) hinges on the specific factual matrix of each case. (*Valentino* at [29]).

(d) It is the party bringing the application (in this case, the Opponent) that bears the legal burden of showing the existence of bad

faith. It is only once a *prima facie* case is made out that the burden shifts to the other party (the Applicant) to disprove any element of bad faith. (*Valentino* at [36]).

20 Bad faith is to be determined as at the date of the application in question though matters occurring after the date of application which might assist in determining the applicant's state of mind as at the date of application may be considered (*Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 (“*Festina*”) at [100]). In the present proceedings, the relevant date is 12 July 2021 (“Relevant Date”).

21 As the High Court stated in *Festina* (at [103]), instances of bad faith may be divided into three categories:

- (a) where there is no intention to use the mark;
- (b) where there is an abuse of a relationship; and
- (c) where the applicant was aware that a third party had some sort of claim to the goodwill in the mark.

22 Under the second category, a finding of bad faith may also be made (*Festina* at [107]):

- (a) where the applicant was aware that someone else intends to use and/or register the mark, particularly where the applicant has a relationship, for example as employee or agent, with that other person, or where the applicant has copied a mark being used abroad with the intention of pre-empting the proprietor who intends to trade in the specific country; or

(b) where an applicant attempts, by means of registration, to seize a trade mark of a third party with whom he had a contractual or pre-contractual relationship, the registration would also be found to have been made in bad faith.

23 However, and importantly, it was highlighted in the High Court in *Digi International Inc v Teraoka Seiko Co, Ltd* [2021] SGHC 165 (at [238]) that “it does not constitute bad faith for a party to apply to register a mark merely because they know third parties are using the same mark in relation to identical goods or services, let alone where third parties are using similar marks and/or are using them in relation to similar goods or services. The applicant may believe that he has a superior right to registration and use of the mark. ... Even if the applicant does not believe that he has a superior right to registration and use of the mark, he may still believe that he is entitled to registration.”

Application of Section 7(6) to the facts

24 Having carefully considered the respective positions put forth by the parties, I consider the outcome of this opposition turns on the Opponent’s ability to prove, in relation to the subjective element of the test for bad faith, that as at the Relevant Date the Applicant knew and/or believed that the “童年时光” mark was in fact used to identify and distinguish goods and services of the Opponent from those of other traders (and was not the Chinese version of the “CHILDLIFE” mark), so as to render his act of applying for the Application Mark one made in bad faith.

The creator of the “童年时光” mark

25 I note that nowhere in the pleadings or submissions does the Applicant claim to have created the “童年时光” mark or submit that the “童年时光” mark

was created by a party other than the Opponent. I therefore accept the Opponent's submission that it was the Opponent's co-founders who came up with the “童年时光” mark.

26 This alone, however, does not support an allegation of bad faith on the part of the Applicant. As earlier stated, the key question is whether the “童年时光” mark was in fact used by the Opponent as its trade indicium and recognised by consumers as being the mark which differentiates the Opponent's goods and/or services from those of other traders. This is disputed by the Applicant, and I now set out my findings on this point.

The business and/or corporate name of the Opponent

27 In support of its argument that the “童年时光” mark is its brand and trade identifier, the Opponent relies heavily on the fact that the whole of the said mark is contained in the Chinese name of the Opponent (ie, “南京童年时光生物技术有限公司”) and submits that the letters “TNSG” in the Opponent's English name are derived from and an abbreviation of the words “童年时光”, being the first letters of the words “Tong Nian Shi Guang”, a transliteration of the Application Mark. The Opponent also adduced evidence of interviews and promotional videos in which the Applicant himself refers orally to the Opponent as “Tong Nian Shi Guang”.⁹

28 I am satisfied that the letters “TNSG” in the Opponent's English name do indeed stand for the words “童年时光”. This is not disputed by the Applicant.

⁹ Guo's 1st SD, at Exhibit C6; Guo's 3rd SD, at Exhibit C5.

29 However, I do not agree with the submission that an opponent is automatically entitled to apply for and/or register as a trade mark, *to the exclusion of all others*, a mark simply by virtue of the said mark being contained in, or constituting, its registered business or corporate name. Indeed, it is not uncommon for companies to choose to do business or trade under a name other than its registered business or corporate name (and therefore be known by consumers under that other name) – the Applicant’s company Biozeal, which trades as ChildLife Essentials, being a case in point.

30 I agree with the Applicant’s submission that it is entirely conceivable, and not at all inconsistent, for the Applicant to refer to the Opponent as “Tong Nian Shi Guang” or “童年时光” – simply as a reference to the Opponent’s Chinese business name – while still holding the view that the “童年时光” mark is the Chinese version of the English “CHILDLIFE” mark.¹⁰

31 Accordingly, I consider these points raised by the Opponent to be neutral in nature and do not materially advance the Opponent’s case that the Applicant had acted in bad faith.

Whether the “童年时光” mark identified the goods and services of the Opponent or the ChildLife Products

32 Having carefully considered all the evidence presented by the parties, I am not persuaded by the Opponent’s submission that the “童年时光” mark was a trade identifier used to distinguish the goods and services of the Opponent from those of other traders.

¹⁰ Applicant’s Written Submissions, at [33(h)].

33 The Opponent claimed that its business model entails sourcing reliable foreign manufacturers of infant and child health products which it then distributes in China and other Chinese-speaking markets as co-branded products, and that it had employed such co-branding strategies with other foreign manufacturers even before it entered into the 2013 Distributorship Agreement. In support of its claim, the Opponent sought to rely on:¹¹

(a) a single email exchange with another supplement manufacturer (Food Science Corporation) in February 2011, an invoice from Food Science Corporation dated November 2011 and two undated photographs of a single bottle of ‘Gawsy Kids Probiotics’ supplement from Food Science Corporation on which label the “童年时光” mark was printed (“Gawsy Probiotic Photos”);

(b) a shipping estimate and certification from another distributor (Magnolia Trading) dated September 2011 and October 2011 respectively; and

(c) a presentation deck (“Presentation Deck”) which the Opponent alleged was used in a presentation given to another manufacturer (Nature’s Way) in February 2012, to introduce the Opponent’s company.

34 Save for the Gawsy Probiotic Photos and Presentation Deck, the remaining documents contain no indication of co-branding and do not at all support the Opponent’s claim.

¹¹ Guo’s 1st SD, at [13] – [25], Exhibits B1 – B5; Opponent’s Statement of Grounds, at [6].

35 On the Gawsy Probiotic Photos, as mentioned above, these were undated, of a single supplement bottle only, and do not demonstrate that this particular product – let alone other products – bearing the “童年时光” mark were in fact sold or marketed in China or elsewhere.

36 As for the Presentation Deck, notably, despite its having been prepared for the purpose of introducing the Opponent and its business to an alleged potential co-branding partner, on the slide bearing the header “Company Contact” the Opponent stated its email address to be “ChildLife1@gmail.com” and its website as “www.childlife.cn”. The Opponent submits that the “ChildLife1@gmail.com” email was provided as a matter of convenience because the Opponent’s marketing team would frequently use and check that email, while the “www.childlife.cn” website was provided because the Opponent’s own website was not available at the time.¹² I do not find the Opponent’s explanations persuasive, particularly given that brands other than ChildLife (namely, Gawsy and Pink Care) – which products the Opponent were presumably also distributors of – were also featured in the presentation. Rather, I consider the Opponent’s use of the ChildLife brand name in its company contact information provided to third parties in commercial communications – rather than using a neutral or distributor-branded email or domain name – while concurrently operating under a name that incorporates a Chinese name bearing a meaning similar to the English brand name¹³ supports the Applicant’s submission that the Chinese name/mark “童年时光” was deliberately chosen to represent the ChildLife brand for the Chinese-speaking market, rather than coincidentally resembling it.¹⁴ This is also consistent with the Opponent’s

¹² Guo’s 3rd SD, at [13] – [14].

¹³ Guo’s 1st SD, at Exhibit C3. I note from testimonies provided that “童年” may be translated as “childhood” and “时光” as “time”, “years” or “days” depending on the context.

¹⁴ Applicant’s Written Submissions, at [33(c)].

simultaneous applications for the “童年时光” mark and “childlife” stylised word mark in China within one month of its incorporation. Given the close relationship between the shareholders/founders of the Opponent and Mr Lu (see paragraph [50(a)] below), I reject as incredible the Opponent’s contention that its shareholders/founders were unaware of the ChildLife brand prior to the incorporation of the Opponent.

37 The Opponent also sought to rely on awards it allegedly won for its brand. However, I note that the awardee inscribed on some of these awards was “童年时光” and at times “Childlife 童年时光” or “Childlife/童年时光”. Without more, I consider that these awards do not advance the Opponent’s argument that the “童年时光” brand belongs to it.

38 In contrast, the Applicant has adduced considerable compelling evidence showing that, even by the Opponent’s own conduct, the “童年时光” mark was used and promoted as the Chinese version of the English “CHILDLIFE” mark, including:¹⁵

- (a) screenshots of listings of the ChildLife Products on an online e-commerce platform showing that the “童年时光” mark was placed immediately below the “Childlife” mark on the photos of each product, that the product title of each listing began with “童年时光 Childlife” before the product name;
- (b) a screenshot from the website of Chinese search engine Baidu stating that “童年时光” is the Chinese name for the ChildLife brand;

¹⁵ Clarke’s 1st SD, at [67] – [70].

(c) a screenshot from the “www.childlife.cn” website (operated by the Opponent), archived in May 2013 via the Wayback Machine, where it states on the webpage titled “About ChildLife 童年时光” (in Chinese) that “童年时光” was created by the Applicant;

(d) a screenshot from the “www.childlife.cn” website, archived in August 2016 via the Wayback Machine, showing an article posted in the “News” section of the website that states that “童年时光” is the Chinese translation of the American brand “childlife”;

(e) a screenshot from the “www.childlife.cn” website, archived in October 2016 via the Wayback Machine, showing in the “Brand Related Questions” section of the website answers posted by the Opponent itself stating that “童年时光 Childlife” is a brand developed by the Applicant and that the Opponent was the sole agent of the American brand “童年时光” in China;

(f) a statement dated 28 September 2012, drafted by Mr Lu, where in the Chinese translation of the preceding English text the terms “Childlife” and “CHILDLIFE” were repeatedly translated as “CHILDLIFE 童年时光”;

(g) a statement dated 5 May 2017, also drafted by Mr Lu to address infringing and counterfeit activities by third parties in China, which states that “[t]he original label contains the trademark “Childlife”. And all Childlife-branded products sold within China should bear the mark in Chinese language together with the logo of “red heart” [(ie, the Heart Device)]”; and

(h) photographs of the ChildLife Products on sale on shelves in Hong Kong showing on the product labels use of the “CHILDLIFE” mark, the “童年时光” mark and the Heart Device as follows:



39 The Opponent itself volunteered evidence of the use of the

“” composite mark on the www.childlife.cn website from as early as 2013, albeit in support of its argument that this composite mark was the result of a marketing campaign which involved combining “its company/brand/trade name” with the “CHILDLIFE” mark.¹⁶

40 I find that the repeated use of the “CHILDLIFE” mark and “童年时光” mark together on multiple occasions, with the marks often appearing immediately next to each other, from at least as early as 2013 (after the 2013 Distribution Agreement was entered into) would be perceived by the reasonable consumer as being equivalent marks referring to the same trade source, ie, the Applicant and/or Biozeal. The same goes for use of the “童年时光” mark with only the Applicant’s Heart Device on the Chinese labels applied to ChildLife Products distributed by the Opponent, evidence of which the Opponent raised to show efforts it had made as exclusive distributor of the ChildLife Products in China.¹⁷ I consider such use would serve to strengthen further the perception of consumers that the “童年时光” mark is the Chinese version and/or equivalent of the “CHILDLIFE” mark.

¹⁶ Guo’s 3rd SD, at [31(d)].

¹⁷ Guo’s 3rd SD, at [27(d)].

41 On the Opponent's argument that it incurred significant expenses on marketing and advertising featuring the “童年时光” or “童年時光” mark in Mainland China and Hong Kong (to support its claim that it owned the “童年时光” brand),¹⁸ in my view none of the evidence adduced by the Opponent shows that the “童年时光” mark and “童年時光” mark were marketed independently of the ChildLife Products and/or “CHILDLIFE” mark such that consumers would recognise those Chinese marks as being the trade indicia of the Opponent. Rather, I consider it standard and entirely consistent for a distributor to spend heavily on marketing and brand-building as part of their territory responsibilities, especially if the distributor has exclusive rights in a market or region (as in the present case). There is an obvious incentive to grow brand awareness and in turn sales, from which the distributor then profits.

42 The Opponent has also asserted that the Chinese version or translation of “CHILDLIFE” was meant to be “赛儿乐”¹⁹ mark, which was proposed by Asambly around June 2011 as the Chinese trade mark for “CHILDLIFE” and for which a document titled “Trademark Usage Agreement” was executed.²⁰ While I accept that such a proposal was indeed made, in my view an English mark may reasonably be associated with more than one translation or variation in another language, depending on the context, usage and market perception. Further, having read the contents of the Trademark Usage Agreement, it merely provides that Asambly is authorised (by ChildLife Essentials (ie, Biozeal)) to make an application on ChildLife's behalf to register the “赛儿乐” mark, and that ownership of the “赛儿乐” mark will be transferred immediately to

¹⁸ Guo's 3rd SD, at [24].

¹⁹ Guo's 1st SD at [46] claims that its pronunciation in the Cantonese dialect is phonetically very similar to “CHILDLIFE”, which makes it suitable to serve as a Chinese version of “CHILDLIFE” to Chinese-speaking consumers.

²⁰ Guo's 1st SD, at [47] – [50]. Guo's 2nd SD, Exhibit 1.

ChildLife Essentials (ie, Biozeal) once Asambly is no longer the exclusive distributor of ChildLife Products in China. Accordingly, I am not satisfied on the evidence that the existence of the “赛儿乐” mark and its limited use precludes “童年时光” from being the Chinese version of the English “CHILDLIFE” mark. On the contrary, I find the sustained and consistent use of the “童年时光” mark alongside “CHILDLIFE” mark over an extended period has resulted in a much stronger commercial and public association between these two marks, than between “CHILDLIFE” and “赛儿乐”.

43 Having found that the “童年时光” mark is the Chinese version of the English “CHILDLIFE” mark, and not a trade identifier used to distinguish the goods and services of the Opponent from those of other traders, I do not place any weight on the Opponent’s evidence of applications and registrations for “童年时光” mark made before the Relevant Date.²¹

Proceedings in foreign jurisdictions and the INNE products

44 Finally, it was brought to my attention that during the course of the present opposition proceedings in Singapore the parties were also embroiled in numerous legal proceedings in other jurisdictions, including before:²²

- (a) the United States District Court (Central District of California) (“US District Court”), wherein the Applicant and Biozeal commenced proceedings against the Opponent and its related entities for trade mark counterfeiting, trade mark infringement, false designation of origin,

²¹ Guo’s 1st SD, at Exhibit F1. I note from the list of applications and/or registrations referred to by the Opponent that many of the applications were made after the Relevant Date while some registrations in Hong Kong expired in September/November 2023.

²² Clarke’s 1st SD, at [46] and Exhibit W.

unfair competition, and seeking the cancellation of various trade marks registered by the Opponent;

(b) the Beijing High People's Court of the People's Republic of China ("Beijing High Court"), wherein the Applicant sought to invalidate the “童年时光” mark which the Opponent had obtained registration for in Class 5 (for specifications including vitamin preparations, food for babies, dietetic substances adapted for medical use, baby milk powder);

(c) the Zhejiang High People's Court of the People's Republic of China ("Zhejiang High Court"), wherein the Applicant commenced proceedings against the Opponent for infringement of the “CHILDLIFE” mark and unfair competition.

45 I note that the arguments made and evidence placed before me regarding the business relationship between the Applicant (and Biozeal and GDS) and the Opponent (and related persons including Mr Lu Qidong, Ms Guo Zhijuan, Mr Guilin Guo) were also before these foreign courts, save that as the commencing party it was the Applicant instead who bore the burden of showing bad faith on the part of the Opponent in applying to register and/or using various marks (including the “童年时光” mark) without the Applicant's knowledge or consent.

46 A further live issue before these foreign courts was that pertaining to products sold under the brand name INNE. In support of its argument in these proceedings that the use of the “童年时光” mark alongside the “CHILDLIFE” mark was part of a co-branding strategy it employed with other foreign manufacturers as well, the Opponent referred to a distributorship arrangement

with Mom's Garden GmbH (which it claims to be a manufacturer of nutritional supplements based in Europe) under which the Opponent distributes co-branded supplements for children that feature both the “童年时光” mark and the English trade mark “INNE”.²³ Screenshots of product listings from the ecommerce platform Lazada and the website “www.inne.com.cn” showing the use of both marks side by side (ie, “童年时光 inne”) were also provided. For reasons which will become apparent from the findings of the foreign courts as summarised below, and given that the screenshots provided were all taken in March 2023 (after the Relevant Date), I do not consider the evidence adduced by the Opponent relating to the INNE products proves a pre-existing co-branding strategy as claimed by the Opponent.

47 While the decisions of these foreign courts are in no way binding on me, certain statements and the conclusions reached by these courts are worthy of note in the context of the weight to be attached or the credence given to the evidence submitted by the Opponent in support of its allegations of bad faith in this case.

48 In deciding to grant default judgment in favour of the Applicant and Biozeal, the US District Court held and/or found that:

- (a) the brand INNE was distributed by Mom's Garden Company Limited, a Hong Kong corporation owned and controlled by Mr Lu Qidong and of which Ms Guo Zhijuan is or was a director. Mom's Garden Company Limited was closely connected to Mom's Garden GmbH, a German limited liability company which Ms Guo Zhijuan is also a director of, and the INNE products were distributed under license

²³ Guo's 1st SD, at [54] – [57].

from the Opponent (who was the registered proprietor of the “INNE” trade mark);

(b) the acts of the Opponent and its related entities (ie, making trade mark applications to register the “童年时光” mark, using in US commerce supplement products displaying the “CHILDLIFE” and “CHILDLIFE ESSENTIALS” word marks, the ® symbol with the marks, Biozeal’s business address and the statement that the product was “formulated by Dr. Murray C. Clarke”) evince a “shockingly brazen counterfeiting scheme”;

(c) there can be no question that the Opponent and its related entities knew of the Applicant and Biozeal, knew to whom the “CHILDLIFE” and “CHILDLIFE ESSENTIALS” marks belonged, and intended to counterfeit ChildLife products and trade off the goodwill of the marks;

(d) the evidence proffered was more than sufficient to establish that Opponent and its related entities are alter egos of each other and are operated, directed and controlled as a single enterprise by spouses Ms Guo Zhijuan and Mr Lu Qidong;²⁴

(e) the abandonment by the Opponent of the US litigation almost three years into the case, after leave was granted to the Applicant and Biozeal to amend the complaint to include the Opponent’s related entities, was deliberate and the default of these related entities was not due to excusable neglect;

²⁴ Such evidence included, amongst others, information showing concentration of ownership of the different entities in the couple’s family, overlaps in the directors and officers of the entities, commingling of assets, use of the same employees, and use of the same attorneys to file the entities’ trade marks.

(f) a default judgment entered solely against the Opponent and Alps Holding Company Limited²⁵ but not the remaining defendants (ie, the rest of the related entities, Ms Guo Zhijuan and Mr Lu Qidong) creates a very real risk that the defendants “will – as they have previously done – shift their counterfeiting activities and resources to any commonly controlled entity or entities not subject to the judgment”.

49 By a decision dated 18 November 2024, the Beijing High Court held, on consideration of the evidence before it,²⁶ that:

(a) the Opponent had used the “童年时光” mark on imported “CHILDLIFE” branded goods and never on goods produced by the Opponent itself, and that the evidence adduced by the Opponent was insufficient to prove that the “童年时光” mark was used on other products;

(b) “the promotional and advertising expenses invested [by the Opponent] were the necessary consideration that should be given in accordance with its agency and distribution relationship and in return for the huge revenue earned, and should not serve as the basis for its assertion of allocation of rights”;

(c) the goodwill in the “童年时光” mark “mostly originates from the brand “CHILDLIFE”” and should belong to the owner of the “CHILDLIFE” brand;

²⁵ After the Opponent’s unauthorised use of the “CHILDLIFE” and “CHILDLIFE ESSENTIALS” marks was discovered, it surrendered three other trade mark registrations. However, Alps Holding Company Limited (which is solely owned by Ms Guo Zhijuan) subsequently filed applications to register those same marks in the same class.

²⁶ Clarke’s 3rd SD, Exhibit AAA.

(d) the Opponent failed to prove that its applications for the registrations of nearly 300 trade marks for goods and services in 42 classes were necessary for normal production and operation purposes. These included more than 100 applications for the “童年时光” mark, “CHILDLIFE” mark and/or Heart Device, as well as applications for marks similar or related to trade marks of third party products in the same industry with “strong originality and distinctiveness”.

50 In its decision dated 31 December 2024, the Zhejiang High Court made the following notable observations and findings of fact:²⁷

(a) per a relationship chart provided by Mr Guilin Guo himself in evidence, Mr Guilin Guo and Ms Guo Zhijuan are father and daughter; Ms Guo Zhijuan and Mr Lu Qidong are husband and wife; Mr Lu Qidong and Mr Lu Qifeng are brothers; and Ms Guo Guilin and Mr Lu Qifeng hold 80% and 20% of the shares in the Opponent respectively;

(b) in multiple articles published online, Mr Lu Qidong had represented himself as the general manager, founder and/or chairman of the Opponent;

(c) the “童年时光” mark had always been publicised and displayed as the Chinese translation of “CHILDLIFE” and as the product name of Biozeal;

(d) it was not a coincidence that the Opponent applied for registration in China of both the “童年时光” mark and the “CHILDLIFE” mark on 20 April 2010;

²⁷ Clarke’s 3rd SD, Exhibit BBB.

(e) the Opponent should have known of, and should bear, the corresponding legal consequences of using, from the beginning of parties' cooperation, the “童年时光” mark as the corresponding Chinese translation of the “CHILDLIFE” mark;

(f) the Opponent had not provided any evidence showing that the “童年时光” mark and its corporate name have been used separately on its own goods and have gained some popularity and market share;

(g) expenses incurred by the Opponent in publicising and promoting the “童年时光” mark were the “necessary price for its agency and distribution relationship and the huge revenue received”, and do not necessitate that the “童年时光” mark belongs to the Opponent therefore;

(h) through years of use of the “童年时光” mark in conjunction with the “CHILDLIFE” mark, the relevant consumers have come to associate the “童年时光” mark with the “CHILDLIFE” mark, ChildLife brand and its products;

(i) as the Opponent had failed to give a reasonable explanation for its applications to register and/or registration of multiple “relatively original and distinctive trademarks of the products of [other companies] in the industry” (many of which have been rejected for being “similar to prior trademarks of others” or invalidated for having been “preemptively (sic) registered by improper means while already in use by others” and/or having been “obtained by other improper means”), these registrations carried “an intention to seek improper benefits from the goodwill of others, which is contrary to the principle of good faith and

disrupts the fair and orderly competition in the market and the normal order of trademark registration”.

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51 Last but not least, it is ironic that the Opponent has sought in these proceedings to justify its 20 April 2010 application for the “childlife” stylised word mark (and an application for the Heart Device on 4 January 2012) by citing a desire to pre-empt bad faith filings under China’s first-to-file system and to avoid the costs and difficulties associated with recovering a mark registered by a squatter or third party. These arguments are typically raised by legitimate brand owners seeking to protect their intellectual property from counterfeiters or squatters. However, in this case, the Opponent clearly lacked legitimate rights to the “CHILDLIFE” mark and the Heart Device. Against this backdrop, the Opponent’s stated rationale appears not only disingenuous but also indicative of a naked attempt to couch its conduct in the language of brand protection while at the same time engaging in the very behaviour it purports to guard against.²⁸

Conclusion on Section 7(6)

52 Having considered all the pleadings and evidence filed and the submissions made in writing by the Opponent and the Applicant, and also submissions made orally by the Applicant, I am satisfied that the Applicant held the genuine belief that it was the legal owner of the Application Mark at the time of the application, and that there is no bad faith on the Applicant’s part in filing the application for it.

53 I find that the Opponent has not satisfied its legal burden of making out even a *prima facie* case of bad faith and consequently, that the opposition fails.

²⁸ Guo’s 1st SD, at [60] – [67].

The application will proceed to registration. The Applicant is also entitled to costs of \$15, 141.50.

David Llewelyn
IP Adjudicator

Sanil Khatri, E-Jynn Tan, Ruby Chan and Carly Wong (Wong
& Leow LLC) for the Applicant