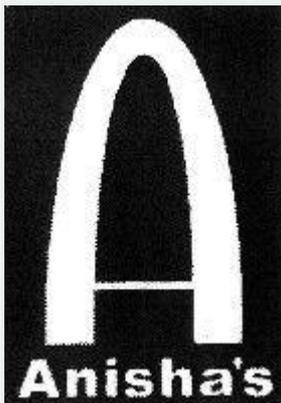


McDonald's fails to prevent registration of an arch logo

Posted on 01/09/2009 by [Kate Duckworth](#)

The Assistant Commissioner of Trade Marks recently ruled that the following application in classes 16, 25, 29, 30, 32, 35 and 43 was not confusing similar to McDonald's Golden Arches trade mark :



("Anisha's logo")

The Assistant Commissioner noted that the Anisha's logo was not limited to colour, which meant that it could be used in the same colours as the McDonald's Golden Arches logo (red and gold). McDonald's brought evidence that in Australia, the applicant had adopted the same corporate colours as McDonald's. The Assistant Commissioner said that he agreed with McDonald's that the Anisha's logo and the McDonalds' Golden Arches share the same type of stylised arch, which could be used in the same colouring and that the marks were similar to that extent. However, the

marks when viewed as a whole were said to be different for the following reasons:

- The McDonalds' Golden Arches were said to make the letter M, whereas the Anisha's logo was said to make the letter A.
- The name "Anisha's" reinforces the letter A as opposed to the letter M in the Golden Arches.
- The Anisha's logo would not be seen as part of the McDonald's family of trade marks such as McChicken, McNuggets and McMuffin.

In relation to whether the purchasing public would assume a connection in the course of trade, the Assistant Commissioner arguably misdirected himself in two ways.

Firstly, the Assistant Commissioner said that the fame of the McDonald's name and brand put beyond doubt that the Golden Arches mark is a McDonald's trade mark. The Golden Arches were said to be so central to the McDonald's brand that they would only ever be associated with McDonald's. The question however, is not whether the opponent's trade marks would be associated with itself, but whether the applicant's trade mark would be associated with the opponent.

Secondly, the Assistant Commissioner phrased the test for confusion and deception in this way: "for a substantial number of the purchasing public to be caused to wonder if there were a connection in the course of trade between the applicant's mark and the opponent, which of course there is not, I consider that the opponent or the applicant would need to educate the public about such a connection in trade". The test is normally phrased by asking whether a substantial number of the purchasing public would be caused to wonder whether there is a connection in the course of trade between the applicant and the opponent, rather than asking whether the public would need to be educated that there was such a connection.

Given the finding that the trade marks at issue were not similar, nothing turns on the Assistant Commissioner's arguable misdirection.

McDonald's has until the end of July 2009 to file an appeal.

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