

# ORTUS EXPERT WHITE SDN BHD

V.

## NOR YANNI ADOM & ANOR

[2022] 2 CLJ 661

### ABSTRACT

In determining an infringement of trade mark, other than the ocular examination, the likelihood of confusion from amongst the public must be given equal weightage. In comparing marks, the proper course is for the court to look at the combination of the features as a whole *vis-à-vis* the disclaimers, if any; and the arrangement and insertion of the essential features in the impugned mark must be such as to make its whole look so similar to the plaintiff's registered mark as would entail confusion and/or deception. As for the disclaimed words, the court is at liberty to consider them in juxtaposition or in combination with the essential features; nonetheless, in determining the applicable test for the likelihood of confusion and/or deception thereof, it is pertinent to look at the nature and legal position of essential features; this includes looking into what are the 'essential' features of the registered trade mark and what actually constitutes 'essential features'.

### COMMENTARY

by A Vijayalakshmi Venugopal

"The plaintiff company ('appellant') in *Ortus Expert White Sdn Bhd v. Nor Yanni Adom & Anor* distributed 'Royal Expert' beauty products. The plaintiff owned the trademark 'Royal Expert White' appearing on these products registered under the Trade Marks Act 1976. The first defendant (first respondent)

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1. [2022] 2 CLJ 661, at p. 675.