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LEGAL UPDATE

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CASE UPDATE

HIGH COURT DECIDES AGAINST VIRTUAL MAP IN COPYRIGHT INFRINGEMENT ACTION

Virtual Map (Singapore) Pte Ltd v Singapore Land Authority [2008] SGHC 42

Executive Summary

The High Court dismissed with costs an appeal by Virtual Map (Singapore) Pte Ltd (“**VM**”) against a District Court judgment that its online maps infringed the copyright of the Singapore Land Authority (the “**SLA**”). The High Court granted an injunction restraining VM from continuing to infringe the SLA Data and ordered an inquiry as to damages or an account of profits.

Dedar Singh Gill and Yvonne Tang of Drew & Napier LLC acted for the successful respondents, the SLA.

Background

The SLA provides land survey services and land information services and publishes the Singapore Street Directory. VM develops and publishes location-based software and systems, including online maps.

The SLA had entered into 7 agreements with VM pursuant to which VM was granted a licence to use the SLA’s street directory data and address point data in vector format (the “**SLA Data**”) in the production of VM’s maps. However, these licence agreements were terminated on 10 July 2004.

After the termination of the licence agreements, VM continued to sell online maps that appeared to be substantial reproductions of the SLA Data.

The SLA brought an action against VM in the District Court, which ruled that VM had infringed the SLA’s copyright in the SLA Data, granted an injunction restraining VM from continuing to infringe the SLA Data and ordered an inquiry as to damages or an account of profits. VM appealed to the High Court.

Decision of the High Court

For VM to have breached the SLA’s copyright, there must have been an objective similarity between the SLA Data and VM’s online maps. It must also be established that this similarity resulted from the copying of the SLA Data.

The High Court held that it was clear on the facts that VM had copied the SLA Data. VM had incorporated in its maps a substantial part of the independent skill and labour that had been directed towards the creation of the SLA Data. Accordingly, the High Court upheld the District Court’s ruling and dismissed the appeal.

MAIN OFFICE
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620

t +65 6535 0733
f +65 6535 4906
mail@drewnapier.com
www.drewnapier.com

Co. Reg. No. 200102509E

Objective similarity disclosed copying; no independent creation

VM claimed that its online maps had, since 9 August 2004, been independently created through the use of Global Positioning System (“GPS”) data and high-resolution satellite imagery.

However, the presence of numerous “fingerprints” of the SLA Data in VM’s maps amply demonstrated that VM had substantially reproduced the SLA Data. The “fingerprints” of the SLA Data which were found in VM’s maps included the following:

- non-existent objects deliberately inserted into the SLA Data, such as non-existent buildings and roads;
- incorrectly named buildings and building numbers;
- unique depictions of object shapes;
- unique building name conventions, eg. with respect to Housing Development Board buildings; and
- uniquely derived X and Y coordinates for 58 address points.

The court noted that, in assessing the cumulative weight of all the similarities as a whole and the “fingerprints”, in particular, “[i]t is the resemblances in inessentials, the small, redundant, even mistaken elements of the copyright work which carry the greatest weight. This is because they are least likely to have been the result of independent design”.

VM failed to prove that the “fingerprints” did not result from copying

As the SLA had demonstrated sufficient similarity between the SLA Data and VM’s maps, and because VM had had prior access to the SLA Data by virtue of the licence agreements, the burden shifted to VM to prove that the “fingerprints” in question did not result from its copying of the SLA Data.

VM failed to discharge this burden. Its staff most intimately involved in the map-making exercise had no qualifications in land survey or experience in cartography. During cross-examination, their answers suggested that they had little map creation expertise and they were unable to satisfactorily explain the presence of the “fingerprints” of the SLA Data in VM’s maps.

Further, VM alleged that its staff had used the GPS data from its own surveyors, physically checked the location of the roads, then refined and adjusted the data to best reflect where the roads were by reference to the SLA Data, before converting the information into a raster image and superimposing it onto VM’s vector data. However, the court noted that copying a work, and then going to the source to check that the information is correct would nevertheless constitute copyright infringement.

On the facts, the court found that VM had merely verified and/or altered the SLA Data and had not independently created its maps.

Substantial copying

VM argued that even if there had been copying, its copying was not substantial when compared to its overall product.

The court rejected this argument. The question as to whether copied material is a substantial part of the copyright work must be determined by reference to its quality rather than its quantity. Moreover,

the copied features need not form a substantial part of VM's maps; even if the overall appearance of VM's maps may be very different from the SLA Data, it does not automatically follow that VM's maps do not infringe the copyright in the SLA Data.

In any event, the court found that while many of the details on the current VM web mapping may have come from satellite images, the task of the mapping from satellite could not have been accomplished without the "skeleton" or the "backbone" of the SLA Data. The copying was "widespread", "wholesale" and "nothing other than substantial".

The court accordingly upheld the District Court's ruling that the SLA had successfully proved its case of substantial reproduction and that VM had infringed the copyright in the SLA Data.

Comment

In the earlier dispute between VM and Suncool International Pte Ltd, the High Court had ruled that VM enjoyed copyright in its maps. As the ruling by the High Court in the instant case demonstrates, that finding did not mean that VM's maps could not infringe the copyright in the SLA's maps. This is an important lesson that licensees working on additions or improvements to licensed data must bear in mind upon the termination of their licences.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the intellectual property lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or either of the following lawyers:

Dedar Singh Gill

Director (Intellectual Property)

T: +65 6531 2507

E: dedar.singh@drewnapier.com

Yvonne Tang

Associate Director (Intellectual Property)

T: +65 6531 2595

E: yvonne.tang@drewnapier.com

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OUR BUSINESS GROUPS AND PRACTICE AREAS

BANKING/GENERAL FINANCE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Valerie Kwok

T +65 6531 2222
F +65 6535 4864
E valerie.kwok@drewnapier.com

BIOMEDICAL SCIENCES

Tony Yeo
T +65 6531 2512
F +65 6220 0324
E tony.yeo@drewnapier.com

BUILDING & CONSTRUCTION

Tan Liam Beng
T +65 6531 4139
F +65 6533 3591
E liambeng.tan@drewnapier.com

CAPITAL MARKETS

Sin Boon Ann
T +65 6531 2206
F +65 6535 4864
E boonann.sin@drewnapier.com

CHINA BUSINESS GROUP

David Chin
T +86 21 6335 1628
F +86 21 6335 0638
E david.chin@drewnapier.com

COMPETITION LAW

Cavinder Bull, SC (contentious)
T +65 6531 2416
F +65 6533 3591
E cavinder.bull@drewnapier.com

Lim Chong Kin (non-contentious)

T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

CORPORATE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Gary Pryke

T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

Yeo Wee Kiong

T +65 6531 2500
F +65 6535 4864
E weekiong.yeo@drewnapier.com

CORPORATE INSOLVENCY & RESTRUCTURING

Sushil Nair
T +65 6531 2410
F +65 6532 7149
E sushil.nair@drewnapier.com

Manoj Sandrasegara

T +65 65314156
F +65 65327149
E manoj.sandra@drewnapier.com

EMPLOYMENT & IMMIGRATION

Indranee Rajah, SC
T +65 6531 4100
F +65 6532 7149
E indranee.rajah@drewnapier.com

FAMILY & MATRIMONIAL

Randolph Khoo
T +65 6531 2418
F +65 6532 7149
E randolph.khoo@drewnapier.com

FUND MANAGEMENT, REIT & PRIVATE EQUITY

Petrus Huang
T +65 6531 2208
F +65 6533 0694
E petrus.huang@drewnapier.com

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

Lim Chong Kin
T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

INSURANCE & REINSURANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

INTELLECTUAL PROPERTY

Morris John (Patents)
T +65 6531 2503
F +65 6533 0694
E mj@drewnapier.com

Redar Singh Gill (Trade Marks)

T +65 6531 2507
F +65 6533 0694
E redar.singh@drewnapier.com

LITIGATION & DISPUTE RESOLUTION

Jimmy Yim, SC
T +65 6531 2504/2505
F +65 6533 3591
E jimmy.yim@drewnapier.com

PROJECT FINANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

PROPERTY

Chua Bee Lan
T +65 6531 2302
F +65 6535 1952
E beelan.chua@drewnapier.com

SHIPPING & INTERNATIONAL TRADE

Ian Koh
T +65 6531 2436
F +65 6533 3591
E ian.koh@drewnapier.com

TAX, TRUSTS, ESTATE PLANNING & PROBATE

Teoh Lian Ee
T +65 6531 2248
F +65 6535 4864
E lianee.teoh@drewnapier.com

TRANSNATIONAL & CROSS-BORDER WORK

Julian Kwek
T +65 6531 2485
F +65 6532 7149
E julian.kwek@drewnapier.com

OTHER OFFICES

Shanghai Office
#2501 Office Tower
Bund Center
222 Yan An Road East
Shanghai 200002
China
T +86 21 6335 1628
F +86 21 6335 0638
E china@drewnapier.com

Drewmarks Patents & Designs (Malaysia) Sdn Bhd
9th floor
Bangunan Getah Asli (Menara)
148 Jalan Ampang
50450 Kuala Lumpur, Malaysia
T +603 2162 2522/2162 2529
F +603 2162 2804
E drewmark@tm.net.my

PT Drewmarks Konsultama
Correspondence address:
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620
T +65 6531 2503/6531 2504
F +65 6533 0694
E ip@drewnapier.com

DrewCorp Services Pte Ltd
20 Raffles Place
#09-01 Ocean Towers
Singapore 048620
ROC No. 200102492H
T +65 6531 2266
F +65 6533 1542/6533 7649
E services@drewcorpservices.com