RDS
ADVOCATES & SOLICITORS

In Business Collaboration:
AMT / ANDERSON MORI & TOMOTSUNE



Just A Repost? Social Media Reposts And Trademark Infringement In Malaysia

11 November 2026

For more information, please contact:

Datuk D P Naban
naban@rdslawpartners.com

Austen Emmanuel Pereira
austen@rdslawpartners.com

Bahari Yeow Tien Hong
bahari@rdslawpartners.com

Farah Shuhadah Razali
farah@rdslawpartners.com

Tan Sri Datuk Harmindar Singh Dhaliwal
harmindar@rdslawpartners.com

Kenny Lam Kian Yip
kenny@rdslawpartners.com

Lim Zhi Jian
jian@rdslawpartners.com

Michael Soo
michaelsoo@rdslawpartners.com

Rosli Dahlan
rosli@rdslawpartners.com

Steven Perian KC
speriankc@rdslawpartners.com

Vinayak Sri Ram
vinayak@rdslawpartners.com

Every business with a social media page has done it. A supplier sends over a polished promotional video, the marketing team clicks "share" and the page gets fresh content at zero production cost. But what happens when that video carries a sign the business was not suppose to use in Malaysia at all?

Recently, the Court of Appeal answered this very question in *Maxcare Success Sdn Bhd v Motionquest Sdn Bhd* [2026] MLJU 1871 and the court's ruling should make every marketing team pause before hitting that button.

The Dispute

The appellant, Maxcare Success Sdn Bhd (Maxcare), is the registered proprietor of the "Maxoil" trademark. In an earlier suit, Maxcare obtained judgment on 9 January 2019 against Shift Holdings Sdn Bhd and one Tam Wei Han, and the "Maxxoil" sign which they had registered was expunged from the Register of Trademarks. As a result, oil and lubrication products bearing the Maxxoil sign, which are manufactured in the United States, could no longer be sold in Malaysia under that sign.

The respondent, Motionquest Sdn Bhd (Motionquest), is the Malaysian distributor of those products. To work around the problem, the products are re-branded and sold in Malaysia under Motionquest's own "Maxx Performance" trademark. The trouble began when, between August and October 2020, Motionquest re-posted four videos containing the Maxxoil sign onto its official Facebook page. The videos only came down in January 2021, when Motionquest was served with the writ. Maxcare sued for trademark infringement and passing off.

The High Court's Decision

The High Court dismissed the entire claim. On trademark infringement, it found that all but one element had been proven. The missing piece, in its view, was "use in the course of trade". Since the Maxxoil sign had never been applied to the products Motionquest actually sold (those carried the Maxx Performance mark), re-posting the videos could not amount to use in the course of trade. The same reasoning disposed of the argument on use in advertising under Section 54(3)(h) of the Trademarks Act 2019 (TMA 2019). Passing off fared no better, as it was found to be insufficiently pleaded and, in any event, not proven.

Passing Off: Lost On The Pleadings

The Court of Appeal agreed with the High Court on passing off. Order 18 rule 7(1) of the Rules of Court 2012 requires every pleading to contain a summary of the material facts on which the party relies. Here, the statement of claim made no express reference to the tort of passing off. There was also no express reference to misrepresentation, one of the key elements of the tort.

To make matters worse, passing off was not among the issues to be tried settled at the case management conferences and only surfaced in the after-trial submissions. A cause of action not pleaded cannot be inserted through submissions or on appeal. The court also saw no basis to disturb the finding of fact that passing off was not established, as neither the offending sign nor Maxcare's mark had been applied to Motionquest's products.

Infringement: A Facebook Page As A "Commercial Document"

On trademark infringement, however, the Court of Appeal took a markedly different view. It identified the determinative question as whether re-publishing the video on the Facebook page amounted to use of the sign in the course of Motionquest's trade.

The court started with Section 54(3) of the TMA 2019, which sets out what it means to "use" a sign. The list includes use on an invoice, catalogue, price list or other commercial document in any medium under paragraph (g), as well as use in advertising under paragraph (h). The court reasoned that the definition clearly extends to electronic media accessible on the Internet. Motionquest is engaged in commercial activity, and one can only surmise that its Facebook page exists to give visibility to, and promote, the products it sells. The page was therefore indisputably a "commercial document" under Section 54(3)(g). The court also drew support from *30 Maples v Siti Saffiyah binti Mohd Firdaus Chew* [2019] MLJU 424, decided under the repealed Trade Marks Act 1976, where publications on Instagram, Instastories and Facebook promoting infringing products were treated as advertising. A Facebook post could likewise be advertising under Section 54(3)(h).

In relation to whether the use was "in the course of trade", the court turned to *Mesuma Sports v Majlis Sukan Negara* [2015] 9 CLJ 125, where the Federal Court rejected the argument that use in the trademark sense can only be achieved through manufacturing and selling goods. Activities such as obtaining sponsorships and granting merchandising and licensing rights were sufficient. Although *Mesuma Sports*

was decided under the repealed Act, the same expression found its way into the TMA 2019, so the reasoning carries over.

Applying these principles, the Court of Appeal held that re-posting the video was use in the course of trade, because the Facebook page can only be there for a commercial purpose. Importantly, it did not matter that the Maxxoil sign was never applied to the labelling or packaging of the goods sold. The re-posting contravened Section 54(2)(b) of the TMA 2019.

Section 54(4): Did Motionquest Know?

The Court of Appeal went further and found that the deeming provision in Section 54(4) was also engaged. Under this provision, a person who uses a sign in advertising, or on a document described in Section 54(3)(g), is treated as an infringer if he knew or had reason to believe that the use was not authorised by the proprietor. The Court described this as a deeming provision creating an irrebuttable presumption of infringement but noted that it is not the only route to liability, since infringement may also be established under Section 54(1) or (2) upon proof of use in the course of trade.

On the facts, Motionquest's own counsel acknowledged that the manufacturer is based in the United States and that, because of the earlier litigation, the products cannot be sold under the Maxxoil mark in Malaysia. The court posed a simple question: why else would a Malaysian distributor be required to repackage the products under the Maxx Performance branding? It could not have escaped Motionquest's attention that it was not permitted to use the Maxxoil sign here.

A Partial Win

The appeal was allowed in part. The High Court's order was set aside and a permanent injunction was granted, together with costs of RM20,000 here and below, subject to allocatur. However, the Court declined to award damages or an account of profits, as the evidence did not show that the Maxxoil sign or Maxcare's mark had been applied to any products actually sold by Motionquest. In other words, the infringement was real but the monetary reward was not.

Key Takeaways

Several practical lessons emerge from this decision. First, a repost is the business's own publication. If a business page exists to promote products, content on it may be treated as the business's own use of the sign, regardless of who created it, so supplier videos, partner materials and old archived posts all deserve a second look. Second, knowledge is easily inferred.

A business that has been through a dispute, or has been required to re-brand or repackage its products, will find it hard to claim ignorance, as the threshold under Section 54(4) is "reason to believe" and not actual knowledge. Third, trademark owners should plead carefully. Social media evidence can be powerful, and the sign need not appear on the goods, but passing off must be expressly pleaded, with misrepresentation made out, and identified as an issue to be tried. Proof that the sign was applied to goods actually sold may also be needed to unlock damages.

The decision confirms that Malaysian courts are prepared to read Section 54(3) of the TMA 2019 in light of how business is actually conducted today, which is online. “Share” is no defence, and a takedown only after the writ arrives is too little, too late. That said, the reasoning rests on the premise that the page exists for a commercial purpose. How the principle applies to employees’ personal accounts, or to third-party content such as tagged posts and comments, remains to be seen. Until then, the safest approach for any business is to treat every repost as if it were a printed catalogue: if the sign inside is not yours to use, do not publish it.

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

KUALA LUMPUR
Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1, Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG
Suite S-21E & F21st Floor, Menara Northam, No. 55, Jalan Sultan Ahmad Shah, 10050 Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU
8-35, Menara Delima Satu, Jalan Forest City 1, Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com