



5. Exhibit "E" – Downloaded page from the IPO Trademark Search website showing the filing details of the application for "THE BLOOM BROTHERS" filed by the Respondent-Applicant under Application No. 4-2010-000194;
6. Exhibit "F & G" – CD's showing pictures and videos of performances of the Opposer;
7. Exhibit "H" – List of lives performances, TV and events appearances of the Opposer for 2010;
8. Exhibit "I" – A copy of the resignation letter or Respondent-Applicant from Opposer's corporation;"
9. Exhibit "J" – A copy of application details for the mark "THE BLOOMFIELDS" filed by Respondent-Applicant under Application no. 4-2009-011700 filed on 10 November 2009;
10. Exhibit "K" – Discussion thread consisting of four pages downloaded from the social networking cite [www.youtube.com](http://www.youtube.com) showing excerpts from fans' blogs that show that the use by the Respondent-Applicant of the confusingly similar mark "THE BBBLOOM BROTHERS" is causing confusion to Opposer's fan base;
11. Exhibit "L" – An article entitled "HOW THE BEATLES AFFECTED THEIR LIVES" Written by Mr. Danee Samonte Featured in pages C-1 and C-6 of the Philippine Star issue of 09 September 2010; and
12. Exhibit "L-1" – Bracketed portion of the article marked as Exhibit "H" that mentions "The Bloom Brothers" (formerly Bloomfields).

Instead of filing a Verified Answer, the Respondent-Applicant filed on 21 January 2010 a "REPLY TO OPPOSITION" alleging that his mark is not confusingly similar to the Opposer's and that his application is not tainted with bad faith. No affidavit or any documentary evidence accompanied the Respondent-Applicant's REPLY TO OPPOSITION.

Should the trademark application of the Respondent-Applicant for the mark THE BLOOM BROTHERS be allowed?

The essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure him, who has been instrumental bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; to protect the manufacturer against and sale of inferior and different articles as his products.

Thus, Sec. 123.1 (d) of the Intellectual Property Code provides that a mark shall not be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services, or closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

In this regard, the records and evidence show that at the time the Respondent-Applicant filed his trademark application on 07 January 2010, the Opposer has an existing application for the registration of the mark THE BLOOMFIELDS AND LOGO. The Opposer's mark was eventually registered on 08 July 2010 under Reg. No. 4-2009-010730 covering entertainment services under Class 41. Obviously, the goods or services covered by the Respondent-Applicant's trademark application and the Opposer's trademark registration are similar or closely related.

But are the competing marks resemble each other such that confusion or deception is likely to occur?

The determinative factor in a contest involving trademark registration is not whether the use of such mark would likely cause confusion or mistake on the part of the buying public. In short, to constitute an infringement of an existing trademark, patent and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so

identical as to procure actual error or mistake; it would be sufficient, for purpose of the law, that the similarity between the two labels as such that there is a possibility of likelihood of the purchaser of the older brand mistaking the newer brand for it.

In this case, the Respondent-Applicant's mark consists of three words "The", "Bloom", and "Brothers". The most noticeable, and which define or give the mark its distinctive character, is the word "Bloom". However, the word "Bloom" is also the distinctive part of the Opposer's mark. The eyes and ears are drawn to this feature. While there are embellishments attendant to both marks, these are insignificant because one's attention and first impression is focused on and directed to the word BLOOM. There is no doubt, therefore, that the resemblance between the marks is likely to deceive or cause confusion considering that they are used for the same or similar service, mainly live band entertainment. A patron that is familiar or has previously encountered the Opposer's mark, would likely be reminded thereof when he or she sees or hears the Respondent-Applicant's mark. Likewise, one who sees and hears for the first time the competing marks is likely to assume that one is just a variation of the other, or the products to which the marks are attached came from just one source or manufacturer, or the sources or manufacturers are connected or associated with another. Moreover, the likelihood of confusion subsists not only on the public's perception of services but on the origin thereof.

The intent to copy on the part of the Respondent-Applicant is obvious. Evidence shows that the Respondent-Applicant was previously an officer of the Opposer-Corporation. Thus, he has prior knowledge of the Opposer's mark and that his filing an application which include the words THE BLOOM, the dominant feature of the Opposer's mark. In fact, this was admitted by the Respondent-Applicant in his REPLY TO OPPOSITION, to wit;

x x x While it is true that the Respondent-Applicant was previously an officer of herein Opposer until he tendered his resignation effective on the 1<sup>st</sup> day of December 2009 and immediately after his resignation from the Opposer corporation, the Respondent-Applicant and his brother Jose Lozano, also a resigned officer of the Opposer, formed a new band but they formulated a different set-up."

The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the answered riddle is why, of the millions of terms and combination of letters and available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.

It is stressed that the law on trademarks and tradenames was based on the principle of business integrity and common justice. This law, both in letter and spirit is laid upon the premises that, while it encourages fair trade in every way and aims to foster, and not to hamper competition, no one especially a trader, is justified in damaging or jeopardizing others business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built by another.

WHEREFORE, premises considered, the opposition is hereby SUSTAINED. Let the file wrapper of Trademark Application Serial No. 4-2010-00194 be returned, together with a copy this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 21 September 2011.