

origin, sponsorship, or approval of its goods and services by the Opposer, for which it is liable for false designation or origin, false description or representation under Section 169 of Republic Act No. 8293.

- “5. Respondent-Applicant appropriation and use of the trademark “BENZACLIN” infringes upon the Opposer’s exclusive right to use as registered owner of its “BENZAC” trademark, which is protected under Republic Act No. 8293 particularly Section 147 thereof.”

Respondent-Applicant failed to file its Answer or any responsive pleading to the Notice of Opposition despite due notice thus, through an Order dated July 7, 2005, Respondent-Applicant was declared in DEFAULT. Consequently, Opposer presented its evidence ex-parte in support of its opposition.

The main issue in this case is WHETHER THE MARK “BANZACLIN” OF THE RESPONDENT-APPLICANT IS CONFUSINGLY SIMILAR TO THE MARK “BENZAC” OF THE OPPOSER.

Opposer submitted and formally offered in evidence the testimonies of two (2) witnesses and documents proving the popularity, extensive use and promotion of the trademark “BENZAC” in the Philippines and worldwide and the probability of confusing similarity between the subject trademarks. Documents marked Exhibits “R” to “R-2” were also presented to show that Opposer was the first to register and use the trademark “BENZAC” in the Philippines and worldwide.

Being the first to register in the Philippines, the mark “BENZAC”, Opposer has the right to use its mark to the exclusion of others. Section 147 of the Intellectual Property Codes provides:

“Sec. 147. *Rights Conferred.* – 147.1 The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs or container for goods or services which are identical or similar to those in respect of which the trademark is registered where such would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.”

This Office finds that the trademark “BENZACLIN” is confusingly similar to the trademark “BENZAC”. Respondent-Applicant’s mark entirely appropriates Opposer’s trademark “BENZAC”. The word “LIN” is a term commonly used for goods falling under International Class 05, thus, its addition to Opposer’s trademark “BENZAC” does nothing to make the mark “BENZACLIN” distinctive from Opposer’s mark. With the appropriation of Opposer’s trademark “BENZAC”, it cannot be denied that Respondent-Applicant appropriated the dominant feature of Opposer’s mark.

In *Philippine Nut Industry, Inc., vs. Standard Brands, Inc.*, (G.R. No. L-23035, July 31, 1975), the Honorable Supreme Court held that:

“Whether or not a trademark causes confusion and is likely to deceive the public is a question of fact which is to be resolved by applying the test of dominancy, meaning, if the competing marks contain the main or essential dominant feature of another by reason of which confusion and deception are likely to result, then infringement takes place.”

Moreover, the use of Respondent-Applicant of the trademark “BENZACLIN” may actually cause confusion since both marks cover pharmaceutical preparations for the treatment of acne.

The foregoing conclusion is all the more strengthened when Respondent-Applicant allowed itself to be declared IN DEFAULT (ORDER No. 2005-476 dated 07 July 2005). For its was recently held by the Supreme Court in *Delbros Hotel Corporation vs. Intermediate Appellate Court, 159 SCRA 533,543 (1988)*, that:

“Fundamentally, default orders are taken on the legal presumption tat in failing to file an Answer, the Defendant does not oppose the allegations and relief demanded in the complaint.”

Indeed, this Office cannot but notice the lack of concern the Respondent-Applicant had shown in protecting the mark it had applied for registration, contrary to the disputable presumption that “a person takes ordinary care of his concern” enunciated in Sec. 3(d) of Rule 131 of the Rules of Court.

WHEREFORE, premises considered, this Opposition is hereby SUSTAINED. Accordingly, Application No. 4-2001-005402 for the registration of the mark “BENZACLIN” filed by Dermik International, Holding, Inc., is, as it is hereby, REJECTED.

Let the filewrapper of “BENZACLIN” subject matter in this case be forwarded to the Administrative, Financial and Human Resource Development Services Bureau (AFHRDSB) for appropriate action in accordance with this DECISION with a copy furnished the Bureau of Trademarks for information and to update its record.

SO ORDERED.

Makati City, 25 January 2006.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office