

JOB DB, INC.,	}	IPC No. 14-2005-00117
Opposer,	}	Opposition to:
	}	
-versus-	}	Serial No. 20-2002-000013
	}	Date Filed: 7 October 2002
MAYBELLE MORALES,	}	Trademark: JobsCD.com (A
Respondent-Applicant.	}	Career Development Network)
x-----x	}	Decision No. 2007 – 03

DECISION

This is an opposition proceeding commenced by Opposer JOBS DB, INC., a corporation duly organized and existing under the laws of the British Virgin Islands, with registered office address at the 2nd Floor, Palm Grove House, Wickham Cay, Road Town, Tortola, British Virgin Islands, against the application for registration of the trademark “JobsCD.com (A Career Development Network)” bearing Application Serial No. 20-2002-000013, which application was filed on October 7, 2002 by Respondent-applicant MAYBELLE MORALES, with address at Tanguille corner Guijo Streets, Maywood I Village, President’s Avenue, BF Homes, Parañaque City.

The subject trademark application was published for opposition in the Trademark Electronic Gazette which was officially released for circulation last 24 August 2005.

Accordingly, the grounds for opposition are as follows:

“1. The approval of Respondent-Applicant’s application will violate the Intellectual Property Code of the Philippines (“IPC”).

“1.1. Such approval will violate the exclusive right granted by Section 147 of the IPC to the Opposer, as the registered owner of the trademark “JobsDB”, to prevent all third parties not having its consent from using in the course of trade identical or similar signs for services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion.

“1.2. Section 123.1 (d) of the IPC prohibits the registration of the trademark sought to be registered by Respondent-Applicant because it is identical to the registered mark belonging to Opposer in respect of (1) the same and/or closely related services; and (2) it nearly resembles Opposer’s mark as to be likely to deceive or cause confusion.

“2. Respondent-Applicant’s mark, “JobsCD.com (A Career Development Network)” and Opposer’s registered trademark, “JobsDB” are used in the same of closely related services.

“2.1. Opposer and Respondent-Applicant are engaged in competing businesses, as both are engaged in the provision of employment, personnel and recruitment related services.

“2.2. The market for the services in which their respective marks are used is the same. Such services flow through the same channels of trade.

“3. Respondent-Applicant’s mark, “JobsCD.com (A Career Development Network)” is confusingly similar to Opposer’s registered trademark, “JobsDB”.

“3.1. The existence of confusing similarity is determined by an assessment of the essential or dominant features of the marks. The Supreme Court thus states the rule in *American Wire and Cable Company v. Director of Patents* (G.R. No. L-26557, February 18, 1970):

“If the competing trademark contains the main or essential or dominant features of another and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary, nor is it necessary that the infringing should suggest an effort to imitate.”

“3.2. In applying the dominancy test, the Supreme Court ruled:

“The similarity between the competing trademarks, DURAFLEX and DYNAFLEX, is apparent. Not only are the initial letters and the last half of the appellations identical, but the difference exists only in two out of the eight literal elements of the designations. Coupled with the fact that both marks cover insulated flexible wires under Class 20; that both products are contained in boxes of the same material, color, shape and size; that the dominant elements of the front designs are a red circle and a diagonal zigzag commonly related to a spark or flash of electricity; that the back of both boxes show similar circles of broken lines with arrows at the center pointing outward, with the identical legend “Cut Out Ring” “Draw From Inside Circle”, no difficulty is experienced in reaching the conclusion that there is a deceptive similarity that would lead the purchaser to confuse one product with the other.”

“3.3. In determining the existence of confusing similarity between marks, the Supreme Court also takes into consideration similarity in sound, where the marks refer to merchandise or services of the same descriptive properties. When the respective trademarks of Opposer and Respondent-applicant are pronounced, the sound effects are confusingly similar.

“3.5. In the case of *Operator incorporated v. Director of Patents* (G.R. No. L-17901, October 29, 1965), the Supreme Court considered the “similarities in appearance and sound between the marks AMBISCO and NABISCO” and “the nature and similarity of the products of the parties” in determining the existence of confusing similarity.

“3.6. The essential or dominant features of the marks are similar in terms of commercial appearance, design, spelling, meaning and pronunciation as to be likely to deceive or cause confusion.

“4. The approval of Respondent-Applicant’s application will cause Opposer serious and irreparable damage and injury.

“4.1. Opposer has given a considerable amount of money, time and effort in extensive advertising, marketing and promotional activities, as well as the maintenance of the high quality of its services in order to vest its registered trademark with goodwill.

“4.2. As provided by the Supreme Court in *Mirpuri v. Court of Appeals* (G.R. No. 114508, November 19, 1999), trademarks are valued for the functions they perform in commerce, namely:

“(1) They indicate origin or ownership of the articles to which they are attached; (2) they guarantee that those articles come up to a certain standard of quality; and (3) they advertise the articles they symbolize.”

“4.3. The registration of Respondent-Applicant’s trademark will cause great and irreparable injury to the business reputation and goodwill of Opposer as such registration will cause the service of Respondent-Applicant to be associated with the services of Opposer, whose trademark is already registered.

“4.3.1. Opposer will be damaged due to confusion of reputation as the public could be misled to assume that the services of the parties originate from the same source, or are related services. In *Converse Rubber Corporation v. Universal Rubber Products, Inc.* (G.R. No. L-27906, January 8, 1987), the Supreme Court held that “the risk of damage is not limited to a possible confusion of goods but also includes confusion of reputation if the public could reasonably assume that the goods of the parties originated from the same source.”

“4.3.2. Given the limitless choices available to Respondent-Applicant for its trademark, the fact that it chose a mark and manner of presentation that so closely resembles that of Opposer shows its intention to unfairly benefit from the goodwill that Opposer has worked so hard to cultivate, to the damage of Opposer.”

In support of the above opposition, Opposer relied on the following facts and circumstances:

“1. Opposer had adopted and had been using the trademark “JobsDB” for the provision of recruitment and interactive recruitment services long before Respondent-Applicant filed for its application for trademark registration on 7 October 2002.

“2. Opposer is the registered owner in the Philippines of the trademark “JobsDB” under Class 35, as evidenced by the Certificate of Registration issued by the Intellectual Property Office (“IPO), with Registration No. 4-2000-001862, filing date on 10 March 2000 and registration date on 13 November 2003. Copy of Opposer’s Certificate of Registration No. 4-2000-001862 is hereto attached as Annex “A” and made an integral part hereof. Notably, no opposition was filed by any person or entity when the trademark “JobsDB” was published for purposes of opposition on 13 October 2003 in the IPO Official Gazette.

“3. Opposer filed its application for the registration of the trademark “JobsDB” with Application No. 4-2000-001863 under Class 38 on 10 March 2000, stating therein its claim of priority right based on the registration of the trademark “JobsDB” in Singapore on 28 January 2000.

“4. Jobs DB Hong Kong Limited, a wholly owned subsidiary of Opposer was founded in 1998 and in carrying out its on-line operations has consistently and continuously used “JobsDB” and “JobsDB.com” ever since its inception. Opposer and its affiliate companies have actively used the trademark “JobsDB” since 1999 and have quickly expanded their operations to presently become the leading provider of online recruitment services in the Asia Pacific with the widest network coverage, spanning Australia, China, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Singapore, Taiwan, Thailand and USA. In addition to its registration in the Philippines, Opposer is the registered owner of the

trademark “JobsDB” in various jurisdictions in the Asia Pacific region, as evidenced by the following certificates of registration:

“4.1. Certificate of Registration No. 825915 under Classes 35 and 38 issued by the Commonwealth of Australia, a copy of which is attached herewith as Annex “C” and made an integral part hereof;

“4.2. Certificates of Registration Nos. 1707689 and 1723576 under Classes 35 and 38, respectively, issued by the Republic of China. Copies of the said certificates, together with their English translations, are collectively marked and attached herewith as Annex “D” and are made integral parts hereof;

“4.3. Certificate of Registration No. BO2977 under Class 35 issued in Hong Kong, a copy of which is attached herewith as Annex “E” and made an integral part hereof;

“4.4. Certificates of Registration No. J00-4207 and J00-4208 under Classes 35 and 38, respectively, issued on Indonesia. Copies of the said certificates, together with their English translations, are collectively marked and hereto attached as Annex “F” and are made integral parts hereof;

“4.5. Certificate of Registration No. 00002186 under Class 38 issued in Malaysia, a copy of which is attached herewith as Annex “G” and made an integral part hereof;

“4.6. Certificates of Registration Nos. T00/01297F and T00/01298D under Classes 35 and 38 issued in Singapore. Copies of the said certificates are collectively marked and hereto attaches as Annex “H” and are made integral parts hereof;

“4.7. Certificates of Registration Nos. 00124485 and 0144298 under Classes 35 and 38 issued in Taiwan. Copies of the said certificates, together with their English translations, are collectively marked and hereto attached as Annex “I” and are made integral parts hereof; and

“4.8. Certificate of Registration No. 2224805 under Classes 35 and 38 issued in Great Britain and Northern Ireland, a copy of which is attached herewith as Annex “J” and made an integral part hereof.

“5. All of the above registrations are subsisting and in force. Opposer has not abandoned the use of the “JobsDB” trademark as it has continuously, actively and extensively used its registered trademark in the provision, advertisement, marketing, and promotion of its services. This is supported by the website domains “JobsDB.com” maintained by Opposer in various jurisdictions in the Asia Pacific, which involve the investment of substantial costs, manpower and effort on the part of Opposer. Copies of the printout of the various website domains of Opposer are hereto attached as Annexes “K”, “K-1”, “K-2”, “K-3”, “K-4”, “K-5”, “K_6”, “K-7”, “K-8”, “K-9”, “K-10” and “K-11”.

“6. The approval of the application for registration of Respondent-Applicant’s trademark will violate Section 123.1 (d) of the IPC. The trademark “JobsCD.com (A Career Development Network)” being applied for by Respondent-Applicant is identical to the registered mark belonging to Opposer in respect of (1) the same and/or closely related services; and (2) it nearly resembles Opposer’s mark as to be likely to deceive or cause confusion.

“7. Respondent-Applicant’s mark, “JobsCD.com (A Career Development Network)” and Opposer’s registered trademark “JobsDB” are used in the same or closely related services. Opposer and Respondent-Applicant are engaged in competing businesses, as both are engaged in the provision of employment, personnel and recruitment related services.

“7.1. Opposer’s trademark is registered under Class 35, for services primarily consisting of business management advice, assistance and advisory services relating to personnel and employment, data processing, data verification and computerized data base management, provision of information relating to commerce and personnel, professional consultancy services relating to business, business statistical studies and provision of business statistical information relating to personnel and recruitment, advertising, and rental of advertising space, among others.

“7.2. Opposer has a pending application for the registration of its trademark under Class 38, for services primarily consisting of telecommunication of information (including web pages), electronic mail services, telecommunications access and links to computer databases and the internet; telecommunications services storage, electronic transmission and delivery of data, among others.

“7.3. On the other hand, Respondent-Applicant seeks to register its trademark under the same Class 35, for services which include “providing and/or publishing information, assistance, and services related to employment”, “professional development”, “advertising”, “advertising agency services”, and “advertising space rentals”, among others. It also seeks to register its trademark under Class 42 for career and employment related services, namely, “information for employers, job seekers, institutions, and organizations made available through the use of information technology tools, devices and facilities both online and off the web, data gathering, data verification, data processing, and database management for employee recruitment, selection, screening and hiring purposes.”

“7.4. As can be seen from the foregoing, Respondent-Applicant intends to register its trademark for identical or similar services covered by the registered trademark of Opposer.

“8. The market for the services in which the marks are used is the same. Such services flow through the same channels of trade. Opposer and Respondent-Applicant both essentially cater to the employment and recruitment needs of employees and employers available on line through their respective web sites.

“9. Respondent-Applicant’s mark “JobsCD.com (A Career Development Network)” is confusingly similar to Opposer’s registered trademark, “JobsDB”.

“9.1. Opposer uses its registered trademark to identify to the public its internet website domain at JobsDB.com, which is the primary channel by which the Opposer provides its services to its clients. Opposer prominently places in each of its website’s pages the words “JobsDB.com” with the phrase “Interactive Recruitment Network” beneath it.

"9.2. Similarly, Respondent-Applicant offers its services through its website domain, and places on its website the words JobsCD.com, with the phrase "Career Development Network" beneath it.

"9.3. The dominant feature of Respondent-Applicant's mark, "JobsCD", is strikingly similar to Opposer's registered trademark, "JobsDB".

"9.4. The marks both begin with the word "Jobs", which connote the employment related services offered by both Opposer and Respondent-Applicant. The letter "J" in both marks is capitalized, followed by the letters "o", "b" and "s" in small letters. The word "Jobs" is then compounded with two letters of the alphabet, each of which includes the letter "D". The marks slightly differ only in that Opposer's mark uses the letter "D" as the first letter, while Respondent-Applicant's mark uses the letter "D" as the second letter. Opposer's design and layout of its registered trademark places the phrase "Interactive Recruitment Network" below the words "JobsDB.com". Likewise, Respondent-Applicant places a three-word phrase, "CAREER DEVELOPMENT NETWORK", which indicates the employment-related services it offers and also ends in the word "Network, below the words "JobsCD.com" in its design.

"9.5. The words "JobsDB.com" and "JobsCD.com" differ only by one letter. When pronounced, the phonetics are confusingly similar.

"9.6. From the foregoing, the similarity of the trademarks in terms of appearance, layout, spelling, meaning and pronunciation is apparent. A side-by-side comparison of the use of the Opposer's and Respondent-Applicant's marks in their respective websites is hereto attached as Annex "L" and made an integral part hereof.

"10. The approval of the application for registration will violate the right of Opposer as registered owner of the trademark "JobsDB" and its exclusive right to prevent all third parties not having consent from using in the course of trade identical or similar signs for services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion, in violation of Section 147 of the IPC.

"11. The approval of Respondent-Applicant's application for registration will cause great and irreparable damage and injury to Opposer.

"12. Respondent-Applicant is not limited to the registration of the trademark "JobsCD.com (A Career Development Network)" in its favor.

"13. The attached Annexes "K", "K-1" to "K-11" as well as Annexes "M", "N", "O" and "P" show how the Opposer actually uses the trademark "JobsDB".

In answer thereto, Respondent-applicant specifically set forth the following allegations:

"1. The Respondent-Applicant specifically denies the allegation of the Opposer regarding its supposed registered trademark for lack of information sufficient to establish the truth thereof.

"2. Significantly, the lone issue raised by the Opposer is that it's alleged registered trademark is confusingly similar to the trademark sought to be registered by the Respondent-Applicant. Hence, the issue to be resolved by this Honorable Office can be phrased thus:

“Whether or not the registered trademark of the Opposer, JobsDB, is confusingly similar with the trademark sought to be registered by the Respondent-Applicant JobsCD.com (A Career Development Network)”

“3. Just a plainview examination of both trademarks would immediately warrant a negative answer. These trademarks are obviously different and would certainly not lead to any confusion to the consuming public.

“4. The Respondent-Applicant specifically denies the Opposer’s claim that it has adopted and has been using the trademark “JobsDB” long before the Respondent-Applicant filed her application for trademark registration. Notably, in support of this claim, the Opposer attached several foreign documents to its Opposition, particularly Annexes “C” to “J”. Unfortunately for the Opposer, these foreign papers are not authenticate in the manner required by the rules of evidence and are therefore inadmissible.

“5. The Respondent-Applicant specifically denies likewise the allegation of the Opposer that it has continuously, actively and extensively used its supposed registered trademark for lack of information sufficient to establish the truth thereof. It must be noted that the Opposer is a foreign corporation without any business presence in the Philippines. On the other hand, the Respondent-Applicant is a 100% Filipino business entity widely known and respected in the career development sector in our country.

“6. In resolving this case, the Supreme Court in the case of Societe Des Produits Nestle, S.A. v. Court of Appeals (356 SCRA 207) has established a clear guide for all of the concerned parties to follow; to wit:

“In infringement of trademark cases in the Philippines, particularly in ascertaining whether one trademark is confusingly similar to or is a colorable imitation of another, no set of rules can be deduced – each case must be decided on its merits.”

“7. Furthermore, the Supreme Court’s ruling in the case of Canon Kabushiki Kaisha v. Court of Appeals (336 SCRA 266) must be considered, to wit:

“The likelihood of confusion of goods or business is a relative concept, to be determined only according to the particular and sometimes peculiar, circumstances of each case. In deed, in trademark law cases, even more than other litigation, precedent must be studied in the light of the facts of the particular case.”

“8. The cases cited by the Opposer are sadly misplaced. There is indeed a patent, or at least a prima facie, similarity between DURAFLEX and DYNAFLEX and AMBISCO and NABISCO. But between JobsDB and JobsCD.com (A CAREER DEVELOPMENT NETWORK) there is hardly any similarity that can likely lead to confusion among the consuming public. Even when the trademarks are read aloud, the phonetics of one is palpably different from the other. On the basis of sight and sound, there is no similarity at all.

“9. Whether the dominancy or holistic test is applied, there can still be no similarity between JobsDB and JobsCD.com (A CAREER DEVELOPMENT NETWORK) that can lead to confusion. The only similarity which can be gleaned from the two trademarks is the word Jobs, which is a generic word and therefore cannot be appropriated. Just by the manifest and noticeable disparity in the

number of letters and words used in each trademark, the common man can easily discern that these two trademarks are completely different. It is highly unlikely that he or she will be confused as to the origin of or the business represented by these trademarks. For this reason alone, the Opposition of the Opposer must be denied.

“10. The allegation in Paragraph 5 of the Opposition, as well as the annexes referred therein (Annexes K to K-11) should be disregarded for it refers to another alleged trade name or trademark utilized by the Opposer and therefore has no application nor relevance in this case.

“11. It must be emphasized that subject matter of domain names has no place in this case. The Opposition is grounded on the alleged confusingly similar trademark. Therefore Paragraphs 9 to 9.6 should also be disregarded.

“12. It must likewise be emphasized that the fact that the Opposer and Respondent-Applicant are engaged in similar business is of no consequence. The Respondent-Applicant should not be faulted for being more creative and innovative than the others. Besides, the Opposer does not even have a business office in the Philippines. It can hardly qualify s an entity actively engaged in business in this country.

“13. The fact is, the Respondent-Applicant is a legitimate Filipino businesswoman actively and peacefully conducting her business in the Philippines helping a lot of her fellow Filipinos. A big international business such as the Opposer should accept and respect this.”

Attached to the Verified Notice of Opposition are the following exhibits for the Opposer:

Exhibit No.	Description
“A”	Certified true copy of Certificate of Registration No. 4-2000-001862 for the trademark “JobsDB” bearing registration date of November 13, 2003
“B”	Certified true copy of Trademark Application bearing Serial No. 4-2000-01863 for the trademark “JobsDB” filed on March 10, 2000
“C”	Certificate of Registration of Trademark No. 825915 issued by the Commonwealth of Australia on 3 March 2000 for the trademark “JobsDB”
“D”	Certificate of Trademark Registration No. 1707689 for the trademark “JobsDB” registered in January 28, 2002 in the People’s Republic of China
“E”	Certificate of Registration No. B02977 for the trademark “JobsDB” registered on 26 March 2002 in the Intellectual Property Department of Hong Kong
“F”	Certificate of Trademark Registration No. 474055 for the trademark “JobsDB”

	registered on March 7, 2000 in Republic of Indonesia
"G"	Certificate of Registration of Trademark No. 00002186 for the trademark "JobsDB" registered on 28 January 2000 in the Intellectual Property Corporation of Malaysia
"H"	Certificate of Trademark Registration No. T00/01297F for the trademark "JobsDB" issued by the Registrar of Trademark in Singapore
"I"	Certificate of Trademark Registration No. 124485 for the trademark "JobsDB" under Class 35 registered on June 1, 2000 in Taiwan
	Certificate of Trademark Registration No. 114298 for the trademark "JobsDB" under Class 38 registered on June 16, 2001 in Taiwan
"J"	Registration Certificate No. 2224805 for the trademark "JobsDB" registered on March 7, 2000 in the Britain and Northern Ireland
"K"	Computer print-outs showing the website of Jobs DB, Inc. in different countries downloaded under the website address http://www.jobsdb.com
"K-1" to "K-11"	Certification issued by Atty. Michelle D. Varca
"L"	Copy of an advertisement of JobsDB.com entitled University of the Month, July issue
"M"	Copy of an advertisement of JobsDB.com posted in The Manila Times Classified Ads dated July 4, 2003
"N"	Copy of an advertisement of JobsDB.com posted in the Kabayan entitled Trabaho bearing date of Hulyo 4, 2003
"O"	Copy of an article entitled "Singled Out" showing JobsDB.com dated April 2003
"P"	

The Respondent-Applicant, on the other hand, did not submit any evidence in support of its claims and defenses.

On April 27, 2006, after the parties failed to reach an amicable settlement and the issues have been joined, the Preliminary Conference was terminated and the parties were directed to

file their respective position papers within a non-extendible period of ten (10) days from receipt of the Order to be issued by this Bureau.

The Opposer and Respondent-Applicant duly filed their respective position papers on June 9, 2006. Hence, this case is now deemed submitted for decision.

The main issue to be resolved in this case is:

WHETEHR OR NOT RESPONDENT-APPLICANT'S MARK JobsCD.com (A Career Development Network) IS CONFUSINGLY SIMILAR WITH THE OPPOSER'S JobsDB MARK.

The test of confusing similarity which would preclude the registration of a trademark is not whether the challenged mark would *actually* cause confusion or deception of the purchasers but whether the use of such mark would *likely* cause confusion or mistake on the part of the buying public. The law does not require that the competing marks must be so identical as to produce actual error or mistake. It would be sufficient, for purposes of the law, that the similarity between the two labels be such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.

Thus, the Supreme Court in resolving the issue of confusing similarity has developed two kinds of tests – the Dominancy Test and the Holistic Test.

As its title implies, the test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception. It is necessary if the competing trademark contains the main, essential or dominant features of another and confusion or deception is likely to result. Indeed, the question lies as to whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or deceive purchasers.

On the other side of the spectrum, the holistic test requires that the entirety of the marks in question be considered in resolving confusing similarity. Comparison of words is not the only determining factor. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels in order that he may draw his conclusion whether one is confusingly similar to the other.

In several cases decided by the Supreme Court, it has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. Now, as to what constitutes a dominant feature of a label, no set of rules can be deduced. Usually, these are signs, color, design, peculiar shape or name, or some special, easily remembered earmarks of the brand that easily attracts and catches the eye of the ordinary consumer.

Relative thereto, it has been ruled in the case of Philippine Nut Industry, Inc. that:

“An ordinary word like PLANTERS may be considered as the dominant and striking mark of a label where it is used not merely to describe and striking mark of a label where it is used not merely to describe the nature of the product, but to project the source or origin thereof, and it is so printed across the label in bold letters that it easily attracts and catches the eye of the ordinary consumer and it is that word and none other that sticks in his mind when he thinks of the product.”

Relying on the above premise, it can be deduced that the trademark itself “JobsDB” is the dominant feature in the Opposer’s mark. Likewise, in the Respondent-Applicant’s mark “JobsCD.com (A Career Development Network)” there is no argument that the dominant word is

“JobsDB” because it is the easily remembered earmark of the brand and the one that easily attracts and catches the eye of the ordinary consumer.

Applying the dominancy test in the instant case and considering the manner of their display, the likelihood of confusion is likely to exist. On its face, the presence of the word “Jobs” in both marks is clearly apparent. The likelihood of confusion between the contending marks is likewise emphasized by the adoption of the Respondent-applicant of two capital letters C and D following the word “Jobs” which is closely related to Opposer’s “JobsDB” mark. The only difference lies on the fact that Respondent-Applicant uses the letters C and D following the word “Jobs” while that of Opposer adopted the letters D and B also following the word “Jobs”. With respect to the manner the letters were printed in the label, confusion is also apparent considering that the word “Jobs” in the Opposer and Respondent-Applicant marks were both printed in capital letter “J” and the letters following thereto which are C and D in Respondent-Applicant’s mark were also printed in capital letters just the same way the letters D and B were printed in Opposer’s mark.

To further bolster the striking similarity, the contending marks as appearing in their respective labels are hereby reproduced for scrutiny:



Opposer’s mark



Respondent-Applicant’s mark

Thus, from the above discussions and comparisons, it can be inferred that in terms of appearance, layout, meaning and pronunciation the likelihood of confusion between the Opposer and Respondent-Applicant mark is clearly apparent.

Emphasis should also be given as to the fact that the marks of the Opposer and Respondent-applicant both refer to closely related services and are intended for similar purposes providing advertising and employment services, among others. Thus, their services flow through the same channel of trade and they have the same target market.

With the foregoing premises having been considered, the law and jurisprudence clearly support the conclusion that Respondent-Applicant is clearly not entitled to eth registration of the mark “JobsCD.com (A Career Development Network)” considering that it is confusingly similar with the Opposer’s “JobsDB” mark in violation of the provisions of R.A. 8293 otherwise known as the Intellectual Property Code of the Philippines specifically Section 123.1 (d) thereof, which provides that:

“Sec. 123. *Registrability* – 123.1 A mark cannot be registered if it:

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) The same goods or services, or
- (ii) Closely related goods or services, or
- (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

x x x”

Finally, evidence also shows that Opposer had adopted and had been using the trademark “JobsDB” for recruitment and advertising services long before Respondent-Applicant filed its application for registration of the mark “JobsCD.com (A Career Development Network)” on October 7, 2002. In fact, Opposer was issued a Certificate of Registration for the trademark “JobsDB” under Class 35 bearing filing date of March 10, 2000 on November 13, 2003 (Exhibit “A”).

WHEREFORE, premises considered, the Notice of Opposition is hereby SUSTAINED. Accordingly, application bearing Serial No. 20-2002-000013 for the trademark “JobsCD.com (A Career Development Network)” filed on October 7, 2002 by Respondent-Applicant MAYBELLE MORALES for services falling under Classes 35 and 42 are, as they are hereby, REJECTED.

Let the filewrapper of the trademark “JobsCD.com (A Career Development Network)” subject matter of this case together with a copy of this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 20 January 2007.

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