

KOLIN ELECTRONICS CO. INC,	}	IPC No. 14-2007-00167
Opposer,	}	Opposition to:
	}	
-versus-	}	Serial No. : 4-2006-010021
	}	Date Filed : 11 September 2006
KOLIN PHILIPPINES INT'L INC.	}	Trademark : "KOLIN"
Respondent-Applicant.	}	
x-----x		Decision No. 2009-109

## DECISION

This pertains to a Verified Opposition filed on 12 June 2007 by herein opposer, Kolin Electronics Co. Inc., a corporation duly organized and existing under the laws of the Philippines with business address at 2788 Anacleto Extension, Tondo, Metro Manila, against the application filed on 11 September 2006 bearing Serial No. 4-2006-010021 for the registration of the trademark "KOLIN" used for goods/service in Class 09 for televisions and DVD players, which application was published in the Intellectual Property Office Official Gazette, officially released for circulation on 09 February 2007.

The respondent-applicant in this instant opposition is Kolin Philippines International, Inc., likewise a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at First Cavite Industrial Estate, Brgy. Lankan, Dasmariñas, Cavite.

The grounds for this opposition are as follows:

- I. Opposer has been adjudged as the True Adopter and Prior User of the mark "KOLIN".
- II. Opposer's Certificate of Registration No. 4-1993-087497 in International Class 9 gives Opposer the right to use the Mark "KOLIN" on goods in International Class 9.
- III. In any event, respondent-applicant has admitted that opposer's protection extends to all goods under International Class 9. Thus, respondent-applicant is estopped from claiming otherwise.
- IV. Registration in International Class 9 in name of respondent-applicant will cause confusion which is an evil that the IP Code seeks to prevent.
- V. The instant application cannot be granted because respondent-applicant is not an applicant in good faith."

The arguments are presented as follows:

“6. Opposer’s use of the mark “KOLIN” in the Philippines dates back as early as 17 February 1989. At the time Opposer started using the subject mark on 17 February 1989, during the effectivity of Republic Act No. 166, use was the basis of ownership of trademarks. [cf. Philip Morris, Inc. vs. Court of Appeals, 224 SCRA 576 (1993)]. x x x

7. Hence, in Unno Commercial Enterprises, Incorporated, vs. General Milling Corporation, et al., 120 SCRA 804 (1983), the Supreme Court held that it is the prior user of a mark who is entitled to its registration: x x x

8. The issue of Opposer’s prior use and adoption of the mark “KOLIN” has been finally settled by the Honorable Bureau in Inter Partes Case (“IPC”) No. 14-1998-00050, where Taiwan Kolin Co., Ltd. (“Taiwan Kolin”) opposed herein Opposer’s Trademark Application No. 84797 for the mark “KOLIN” in International Class 9. In said opposition, the Honorable Bureau adjudged herein Opposer as the prior user and adopter of the mark “KOLIN” in the Philippines, which use dated as early as 17 February 1989.

9. In IPC No. 14-1998-00050 involving International Class 9, the Honorable Bureau already made a judgment that it is Opposer, and not Taiwan Kolin, which s the true owner of the mark “KOLIN”. The Honorable Bureau made a finding that, based on the documentary and testimonial evidence presented by the parties, Opposer is the prior adopter and user of the mark “KOLIN” in the Philippines, having been able to prove the date of first use of the same mark in 1989, which is ahead of Taiwan Kolin’s use of the said mark in the Philippines in 1996. x x x

10. Taiwan Kolin subsequently appealed the BLA Decision dated 27 December 2002 to the IPO Director General. However, in a Decision dated 06 November 2003, the IPO Director General affirmed the BLA Decision dated 27 December 2002 and stated, among others, that Opposer is the prior and actual commercial user and owner of the trademark “KOLIN” in the Philippines, x x x

11. In a Resolution dated 01 July 2004, the IPO Director General issued a Writ of Execution to enforce the BLA Decision dated 27 December 2002. In the same resolution, the IPO Director General even ruled that the Opposition filed by Taiwan Kolin against herein Opposer has resulted in wasting herein Opposer’s resources and invaluable time, x x x

12. In its Order No. 2004-397 dated 21 July 2004, the Honorable Bureau implemented the Writ of Execution and issued Certificate of Registration No. 4-1993-087497 for the mark “KOLIN” in the name of Opposer. x x x

13. Taiwan Kolin filed with the Court of Appeals a Petition for Review with Application for Preliminary Injunction and/or Temporary Restraining Order dated 20 November 2003 and docketed as CA-GR S.P. No. 80641. However,

the Court of Appeals has issued its Decision dated 31 July 2006 upholding the BLA Decision dated 27 December 2002 and the IPO Director General's Decision dated 06 November 2003 in favor of herein Opposer, x x x

14. It should be pointed out that the opposer in the above-mentioned IPC No. 14-1998-00050 was Taiwan Kolin, the majority stockholder of herein Respondent-Applicant. x x x Moreover, Taiwan Kolin directly participates in the management, supervision or control of Respondent-Applicant, as admitted by Taiwan Kolin in paragraph 3 of its Reply (to Comment to the Petition for Review) dated 22 December 2003 filed before the Court of Appeals in "Taiwan Kolin Co. Ltd. vs. Kolin Electronics Co., Ltd." docketed as CA-GR S.P. No. 80641. x x

15. In addition, Taiwan Kolin has admitted assigning five (5) persons to the plant and financial operations of Respondent-Applicant. These acts of management and control reveal petitioner Taiwan Kolin's active involvement in the business of Respondent-Applicant. x x x

17. In view thereof, Taiwan Kolin's acts of management and control of Respondent-Applicant undoubtedly shows that Respondent-Applicant is a mere alter ego of Taiwan Kolin. It must be emphasized that the commercial interests that are being represented in the instant Trademark Application No. 4-2006-010021 are also the interests of Taiwan Kolin. Hence, Respondent-Applicant is bound by the decision of the Hearing Officer in IPC No. 14-1998-00050. Therefore, Respondent-Applicant is bound by the admissions of Taiwan Kolin and by the decision of the Hearing Officer in IPC No. 14-1998-00050 finding herein Opposer as the true owner of the mark "KOLIN".

18. Since the Honorable Bureau already made a judgment that it is Opposer, which is the true owner of the mark "KOLIN", herein Respondent-Applicant cannot appropriate the said mark as its own. Hence, Trademark Application No. 4-2006-010021 should be refused registration.

19. As the registered owner of the mark "KOLIN", Opposer has the exclusive right to use the mark "KOLIN" in connection with the goods specified in its certificate of registration and those which are related thereto, especially those belonging to the same class. This is an exclusive right that is expressly granted to Opposer under Section 138 of Republic Act No. 8293, otherwise known as the Intellectual Property Code ("IP Code") x x x

20. Hence, the registration of the mark "KOLIN" in the name of Respondent-Applicant will result in an utter violation of section 138 of the IP Code and of the rights of Opposer as the registered owner of the same mark.

21. Moreover, Sections 123 (d) and (g) of the IP Code provide for instance when a mark cannot be registered, x x x

22. The foregoing provisions of the IP Code explicitly proscribe the registration of a mark if it is identical with a registered mark belonging to different proprietor 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.

23. It is undeniable that the mark "KOLIN" sought to be registered by Respondent-Applicant is identical with the mark "KOLIN" which is registered in the name of Opposer under Certificate of Registration No. 4-1993-087497. In the instant case, the likelihood of confusion is inevitable considering that Respondent-Applicant's application covers International Class 9 namely "television, DVD players" which are closely related to the goods covered by Opposer's Certificate of Registration No. 4-1993-087497, also in International Class 9.

24. Respondent-Applicant's use of the mark "KOLIN" for televisions and DVD players" definitely causes confusion since Opposer itself manufactures and distributes electronic products bearing the mark "KOLIN" for goods falling in International Class 9. x x x

25. The confusion cannot be avoided since Respondent-Applicant's "television and DVD players" will inevitably be introduced to the public "KOLIN" products, and will be offered for sale in the same channels of trade where Opposer also distributes its own products bearing the same mark, i.e., appliance centers or electrical stores.

26. Hence, in view of the established fact that Opposer is the registered owner of the mark "KOLIN" for goods falling under International Class 9, it necessarily follows that the use of an identical or confusingly similar mark by third parties is in derogation of the right of Opposer as the registered owner of the mark "KOLIN".

27. To this end, Section 147.1 of the IP Code provides that the registered owner of the mark "KOLIN" 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 containers for goods or 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, x x x

30. It bears pointing out that Respondent-Applicant already admitted in IPC No. 14-2006-00064 that Opposer's trademark protection applies to the goods specified in its Certificate of Registration covering International Class 9 goods, and those related thereto.

31. In Paragraph 23 of herein Respondent-Applicant's Answer dated 14 August 2006 in IPC No. 14-2006-00064 involving International Class 35, respondent-applicant conceded that the Honorable Bureau's decision dated

27 December 2007 adjudged herein Opposer to be entitled to the registration of the mark "KOLIN" in International Class 9. x x x

32. In Paragraph 25 of herein Respondent-Applicant's Answer dated 14 August 2006 in IPC No. 14-2006-00064, Respondent-Applicant's Answer dated 14 August 2006 in IPC No. 14-2006-00064, Respondent-Applicant admitted that herein Opposer's certificate of registration over "KOLIN" conferred to it exclusive right to use the mark "KOLIN" to goods specified in the Certificate and those related thereto. x x x

33. Recently, in its Position Paper dated 16 March 2007 in IPC No. 14-2006-00064, herein respondent-applicant conceded that Opposer's certificate of registration conferred upon Opposer the exclusive right to use Opposer's registered "KOLIN" mark to goods in International Class 9. x x x

34. Moreover, since Respondent-Applicant is bound by the admissions made by Taiwan Kolin, Respondent-Applicant is bound by what Taiwan Kolin admitted in its Position Paper dated 17 March 2006 in IPC No. 14-2004-000105 where Taiwan Kolin conceded that herein Opposer's Certificate of Registration has conferred to Opposer the exclusive right to use its registered mark "KOLIN" to the extent of the goods specified in said certificate, or at most, to goods related thereto, that is, other goods falling under International Class 9, x x x

35. By virtue of its own admission, Respondent-Applicant is likewise estopped from claiming that it can appropriate the mark "KOLIN" for goods falling under International Class 9, which Respondent-Applicant seeks to do in its Trademark Application No. 4-2006-010021.

36. While no proof of confusion needs to be submitted by Opposer, it nevertheless submits herewith to illustrate said confusion. As a matter of fact, as a result of Respondent-Applicant's use of the mark "KOLIN", some of the customers of Respondent-Applicant are under the impression that Respondent-Applicant and the opposer are one and the same company. Thus, Opposer has received Product inquiries, requests for service or maintenance of appliances, and complaints regarding goods belonging to, or originating from, Respondent-Applicant which bear the "KOLIN" mark. x x x

39. Respondent-Applicant's Trademark Application No. 4-2006-010021 for the mark "KOLIN" was filed in utter bad faith considering that Respondent-Applicant's was fully aware of Opposer's ownership over the mark "KOLIN", as declared by both the IPO and the Court of Appeals.

40. It bears emphasis to state that Opposer's Trademark Application No. 87497 was filed on 17 August 1993 and published on 23 June 1998, which dates are much earlier than the 11 September 2006 filing date of Respondent-Applicant's Trademark Application No. 4-2006-010021. By reason of

Opposer's prior use in Philippine commerce of the mark "KOLIN" since 1989 and the earlier filing date of Opposer's Trademark Application No. 87497 for the mark "KOLIN", it is clear that opposer is entitled to the exclusive use of the said mark in the Philippines.

41. Respondent-Applicant's bad faith in filing the subject application is made even more evident by the fact that the subject application was filed less than two (2) months from the promulgation of the Court of Appeal's Decision dated 31 July 2006 wherein the Court of Appeals upheld Opposer's ownership of the mark "KOLIN".

Attached to the foregoing opposition are documentary evidence consisting of Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "M-1", "M-2", "N", "N-1", "N-2", "O", "O-1", "O-2", "P", "P-1", "Q", to "Q-21".

In compliance to the Notice to Answer dated 04 July 2007, respondent-applicant submitted its Verified Answer on 26 October 2007, specifically denying the allegations in the following: paragraphs 1 to 6 under the grounds for cancellation of registration, and paragraphs 1 to 6 under the facts relied upon in support of the petition. Attached to the said Answer are documentary evidence marked as Exhibits "1" to "1-h", "2", "2-a", "3", "3-a", "4", "4-a", "5", "5-a", "6", "6-a", "7", "7-a", "8", "8-a", "9", "9-a", "10", "10-a", "11", "11-a", "12", "12-a", "13", "13-a", "14", "14-a", "15", "15-a", "16", "16-a", "17", "18", to "18-c", "19", to "19-b", "20", "21", "22" to "22-m", "23", "23-a" and "24".

The following are the Special and/or Affirmative Defenses, to wit:

"4. Respondent-applicant's application for subject trademark on two (2) specific goods, namely "TVs" and "DVD players" under International Class 9, cannot be denied on the sole basis of the final judgment rendered in IPC No. 14-1998-00050 (subject of Appeal No. 14-03-24; CA-G.R. S.P. No. 80641) ("previous case") involving Opposer and Taiwan Kolin.

4.1 The final judgment in the previous case cannot be invoked as res judicata to the instant case involving the Respondent-applicant, because the latter was not a party in that previous case. Respondent-applicant is not also the successor-in-interest of Taiwan Kolin, since both corporations are in existence up to the present;

It is a settled principle that corporations are vested by law with a personality separate and distinct from the persons composing it, as well as from that of any other legal entity to which it may be related, which holds true for the respondent-applicant even if Taiwan Kolin may be affiliated or associated with, or is a stockholder of the former;

4.2 The final judgment in the previous case cannot be invoked as res judicata to the instant case, because the previous case relates to the incident

of Opposer's trademark application, and not to the trademark application of the Respondent-applicant;

It is settled that for res judicata to exist, there must be, between the first and second actions identity of parties, of subject matter, and of course of action, which elements did not concur in his case;

4.3 On the basis of the decision rendered by the appellate Court of Appeals in the previous case, Opposer's ownership and right over the mark "KOLIN" has been specifically clarified to be limited only in connection with the goods and those that are related thereto as specified in Opposer's certificate of registration, x x x

5. Respondent-applicant's application for subject trademark on "TVs" and "DVD players" cannot be denied on the mere basis of Opposer's certificate of registration, or prior adoption and use, of the "KOLIN" mark in the Philippines;

5.1 As stated in Paragraph 4.3 above which is hereto re-pleaded by incorporation and reference, Opposer's ownership and exclusive right to use the "KOLIN" mark is limited to such goods that are covered by its certificate of registration. Opposer's certificate of registration over the mark "KOLIN" relates to the goods of "automatic voltage regulator, converter, recharger, stereo booster, AC-DC regulated power supply, step-down transformer and PA amplified AC-DC" ("Opposer's goods") which, however, does not include "TVs" and "DVD players" ("Respondent-applicant's goods");

5.2 Respondent-applicant's goods of "TVs" and "DVD players" are not identical or similar to any of Opposer's goods, even if falling under the same International Class 9. The goods of "TVs" and "DVD players" are not also related to any of Opposer's goods which are "audio or electrical equipment and power supplies" as distinguished from Respondent-applicant's "TVs" and "DVD players" which are "home appliances" catering to the entertainment of the household;

It has been decided by the Supreme Court that relatedness of goods shall also be measured against their descriptive properties, physical attributes, essential characteristics with reference to form, composition, texture or quality, or purpose, or when they are sold at grocery stores, and not only upon their classification, x x x

It has also been decided by the Supreme Court that one who has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by others for products which are of a different description or kind, x x x

5.3 Opposer has not adopted and used the “KOLIN” mark on the products on “TVs” and “DVD players”, because as stated earlier, it is not engaged in and it has not ventured or embarked upon the manufacture, sale and/or distribution of the goods of “TVs” and “DVD players” from the time of its alleged adoption and use of its “KOLIN” mark and up to the present. Opposer’s bare allegations that Respondent-applicant’s use of subject mark on “TVs” and “DVD players” has resulted and continues to result in irreparable damage and injury to the former is bereft of merit by the fact that Opposer’s business or trade does not deal with “TVs” and “DVD players” to have been possibly affected at all by it;

It has been decided by the Supreme Court that when a trademark is used by a party for a product in which the other party does not deal with, the use of the trademark on the latter’s product cannot be validly objected to, x x x

5.4 Respondent-applicant has acquired or obtained a property right, goodwill and reputation over the goods of “TVs” and “DVD players” bearing the subject mark as a result of the continued use, promotions, advertisements, sales and development of the product which are identified in the mind of the public or consumer to be those of Respondent-applicant which should be protected and maintained, applying Section 168.1 of the IP Code;

- a) Respondent-applicant made sales of 25,567 units of its “TX” to consumers in 2006 alone (at the time of herein application). x x
- b) The goods of “TVs” and “DVD players” have been sufficiently advertised and promoted to the public or consumers to be Respondent-applicant’s products as indicated therein. Respondent-applicant’s print advertisements for “TVs” and “DVD players” bearing subject mark in leading newspapers are hereto appended to form integral parts hereof x x x
- c) Respondent-applicant’s goods of “TVs” and “DVD players” are known by the relevant sector of the community to be its products as proven by the following: x x x

5.5 Opposer’s “KOLIN” mark has neither been qualified or previously decreed to be a well-known mark and cannot bar the grant of Respondent-applicant’s trademark application of subject mark for the goods of “TVs” and “DVD players” which are not identical or similar or related to any of Opposer’s goods, applying Section 123.1 (f) of the IP Code;

It has been decided by the Supreme Court that a claim for exclusivity can only favor a mark or name which has been qualified to be “well-known”, x x x



6. Respondent-applicant's application for subject trademark on "TVs" and "DVD players" cannot be denied on the bases of bare allegation on the part of the opposer of a confusion or likelihood of confusion as to source or origin of said goods:

6.1 A likelihood of confusion is not presumed when an identical signs used for goods which are not identical or similar, applying Section 147.1 of the IP Code. Respondent-applicant's "TVs" and "DVDs" are neither identical nor similar, nor related to any of Opposer's goods which are "audio or electrical equipment and power supplies" as stated earlier, thus, likelihood of confusion on the part of the pubic or consumer as to source or origin thereof cannot be merely presumed;

6.2 Opposer's goods are non-competing with respondent-applicant's "TVs" and "DVD players", since Opposer's goods serve distinct functions or uses or purposes from Respondent-applicant's "TVs" and "DVD players" to the consumer; x x x

6.3 There is no likelihood of confusion on the part of the public or consumer as to the origin or source of Respondent-applicant's "TVs" and "DVD players" except to it, because Opposer's business or trade does not deal with any such "TVs" and "DVD players";

6.4 There is no likelihood of confusion on the part of the public or consumer as to the origin or source of Respondent-applicant's "TVs" and "DVD players" except to it, because Opposer's goods and Respondent-applicant's "TVs" and "DVD players" do not flow or end up at the same channels of trade or channels of distribution;

It has been decided by the Supreme Court that another factor to show if the goods are non-competitive and non-related is when the goods flow through different channels of trade or channels of distribution, x x x

Respondent-applicant's "TVs" and "DVD players" are sold and/or distributed through listed dealers or outlets which are "appliance stores or center", and not in the "audio electronic or electrical shops, or hardwares" where Opposer's goods are being sold; x x x

6.7 Confusion is further unlikely when the goods involved are not inexpensive items, like the case of Respondent-applicant's "TVs" and "DVD players";

It has been decided by the Supreme Court that the "casual buyer" is [still]predisposed to be more cautious and discriminating over the purchase of expensive or costly items, x x x

7. Respondent-applicant's application for subject trademark on "TVs" and "DVD players" cannot be denied on the mere basis of the enactment of the IP Code and Section 138 thereof:

7.1 Section 138 of the IP Code is not repugnant or insusceptible of harmonization with Section 20 of RA 166 ("Trademark Law") x x x

It has been decided by the Supreme Court that the repeal of the old Trademark Law pertains only to provision which are repugnant or not susceptible of harmonization with the new IP Code. (Samson vs. Daway, 434 SCRA 612 (2004))

7.2 Both above-cited provisions on trademark rights adhered to the rudimentary precept in trademark protection that the right to a trademark is a limited one;

In a number of cases which have reached the Supreme Court the latter had upheld an identical mark for goods even if falling under the same class. (Mighty Corporation vs E. & J. Gallo Winery, supra, citing Acoje Mining Co., Inc. vs. Director of Patents, supra; Philippine Refining Co., Inc. vs Ng Sam and Director of Patents, supra; Hickok Manufacturing Co., Inc. vs. Court of Appeals and Santos Lim Bun Liong, supra; Shell Company of the Philippines vs Court of Appeals, supra; Esso Standard Eastern, Inc. vs. Court of Appeals, supra); and

8. On the basis of paragraphs 3 thru 7 above, inclusive of sub-paragraphs thereof, which are hereto re-pleaded by incorporation and reference, it is evident that Respondent-applicant's subject application was not filed in bad faith."

In response, opposer filed its Reply dated 05 November 2007, specifically denying the allegations in respondent-applicant's above-quoted Answer together with Exhibits "S", "T", "T-1" and "T-2"; with reiteration of the following points: "(I) respondent-applicant is clearly bound by the final judgment adjudging opposer as the true adopter and prior user of the mark "KOLIN"; (II) respondent-applicant has admitted that opposer's protection extends to all goods under International Class 9, thus, respondent-applicant is estopped from claiming otherwise; and (III) Section 138 of the IP Code grants opposer the clear right to use the mark "KOLIN" in Class 9 and bars respondent-applicant from appropriating the same mark for the same class."

On the scheduled Preliminary Conference, parties manifested the unfeasibility of case settlement, hence, said conference was ordered terminated on 06 December 2007. Parties are thereafter directed to submit their respective position papers and/or draft decisions, if desired. On 21 December 2007, this Bureau received the position papers of the parties for this Bureau's deliberation.

The Issue –

Who between opposer and respondent-applicant is the rightful owner of the contending identical mark "KOLIN" covering goods under classification 09.

The resolution of the antipodal claims of trademark ownership between the opposer and the respondent-applicant has to consider the following sub issues jointly posed by herein parties: (1) confusing similarity in the contending marks in relation to the goods they cover; (2) opposer as prior user and true adopter of the mark "KOLIN" in reference to previous cases; and (3) application of the doctrine of instrumentality or alter ego against the doctrine on separate and distinct personality of a judicial entity.

With respect to the contending marks, both parties use exactly the same word mark "KOLIN", and no further discussion on this matter is necessary. In relation to the nature of the goods covered by the respective identical marks, the file wrapper record shows respondent-applicant's "KOLIN" mark covering class 09 for televisions and DVD players; whereas opposer's "KOLIN" mark was issued Certificate of Registration No. 4-1993-087497 (Exhibit "G") which also covers class 09 for automatic voltage regulator, converter, recharger, stereo booster, AC-DC regulated power supply, step-down transformer, PA amplified AC-DC.

In the case of *ESSO v. CA*, 116 SCRA 336 (1982), the Supreme Court ruled that "Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related when they serve the same purpose or are sold in grocery stores. Thus biscuits were held related to milk because they are both food products. Soap and perfume, lipstick and nail polish are similarly related because they are common household items nowadays. The trademark "Ang Tibay" for shoes and slippers and pants was disallowed to be used for shirts and pants because they belong to the same general class of goods, soap and pomade, although non-competitive, were held to be similar or to belong to the same class, since both are toilet articles".

In the instant case, the foregoing are deemed related goods. Home appliance is no far different from any electronic equipment. The terms, in fact are used interchangeably as most of the home appliances are electronically operated, or home appliances are operated with electrical equipment or power supplies. Buyers of these goods go the same channels of trade such as department stores or appliance stores where both goods are available for sale. The apparent conclusion is public confusion that opposer's and respondent's respective goods are variation of each other and also the assumption that the goods originated from one manufacturer or source, when in fact, they did not.

More so, opposer's evidence consisting of various e-mails (Exhibits "Q" and its sub-markings) it received from public consumers reflecting their complaints, concerns and other information about respondent-applicant's goods as televisions, air-conditioning units and DVD players, are obvious showing of actual confusion of goods as well as confusion as to origin or source of goods. These reveal factual confusion of the buying public between the marks in controversy.

After finding a categorical existence of confusion in this instant case, it is now apropos to consider the subject mark "KOLIN" from the point of view of what marks are registrable, to wit:

"A mark cannot be registered if it:

x      x      x

- (d) is identical with a registered mark belonging to a different proprietor 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" (Emphasis Supplied)  
Sec. 123.1, RA 8293 or the Intellectual Property Code

A perusal of the records show that opposer has the priority filing date for the mark "KOLIN" on 17 August 1993 with Trademark Serial No. 4-1993-087497 (Exhibit "G"). The same document shows that it bears Registration No. 4-1993-087497 dated 23 November 2003 for goods in class 09 as enumerated in previous paragraph.

Verily, the issuance of a certificate of registration creates ownership in favor of the registrant, to wit:

"A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate."  
(Emphasis Supplied)  
(Sec. 138, supra.)

The prima facie evidence in a certificate of registration establishes a satisfactory presumption which may be disputed only by evidentiary fact of prior and actual domestic use of the subject mark by the contesting party. With this presumption of law favoring registrant, the onus probandi is shifted to the party against whom the interference is made to adduce satisfactory evidence to rebut the presumption and hence, to demolish the prima facie case.

In the instant case, respondent-applicant failed to destroy the prima facie case established by the certificate of registration in favor of herein opposer. This is further reinforced by opposer's evidence consisting of Decisions showing that the controversy on prior use and ownership of the trade mark "KOLIN" was already settled in the case entitled "Taiwan Kolin Co. Ltd. vs. Kolin Electronics Co., Ltd.". In this Inter Partes Case No. 14-1998-

00050, the Bureau of Legal Affairs declared herein opposer Kolin Electronics Co. Inc., as the true owner of the mark "KOLIN", and as the prior user and adopter of the said mark in the Philippines as early as 17 February 1989 (Exhibit "D"). The same statements of facts were noted by this Bureau in respondent-applicant's Answer. The Court of Appeals' Decision dated 31 July 2006 (Exhibit "H") in CA-GR S.P. No. 80641 are deemed final and executory. It upheld herein opposer's ownership of the mark "KOLIN", including the exclusive right to use the same in connection with the goods specified in its certificate of registration and those related thereto.

Respondent-applicant argued on the Doctrine of Separate and Distinct Personality, stating that the party to the referred cases is Taiwan Kolin, an entity with a separate juridical personality. Therefore, *res judicata* will not apply to separate entities. This Bureau cannot agree. While it is legally correct that the general rule provides that a corporation is clothed with a personality separate and distinct from the persons composing it, this personality is only a fiction created by law for convenience and to prevent injustice. Thus, if valid grounds exist such as the instrumentality or alter ego doctrine, then, the separate juridical personality of the corporation is disregarded by law.

An exhaustive scrutiny of the records of the case convince this Bureau to concur with the position of herein opposer that indeed, respondent-applicant is an instrumentality of Taiwan Kolin. Opposer presented substantial evidence that respondent-applicant is effectively under the management, supervision and control of Taiwan Kolin manifested through the assignment of five (5) persons to the financial and plant operations (Exhibit "L"); Taiwan Kolin's admission of its direct participation in the management, supervision and control of respondent-applicant (Exhibit "K"); Taiwan Kolin's majority ownership of stocks in respondent-applicant (Exhibit "I" and "J"); and the maintenance of one website of both companies and the admission to the same (Exhibits "M" to "M-2").

Finally, the following pronouncements of the Supreme Court, consistently applied in trademark cases, are just the same relevant and opportune in this instant case, to wit:

"Those who desire to distinguish their goods from the goods of another have a broad field from which to select a trademark for their wares and there is no such poverty in the English language or paucity of signs, symbols, numerals, etc., as to justify one who really wishes to distinguish his product from those of all others in entering the twilight zone of the field already appropriated by another." (Weco Products CO. YS. Milton Ray Co., 143 F. 2d 985, 31 C.C.P.A. Patents 1214)

"Why of the million of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark." (American Wire and Cable Co., YS. Director of Patents, 31 SCRA544)

WHEREFORE, premises considered the Notice of Opposition filed by Kolin Electronics Co. Inc., is as it is hereby SUSTAINED. Accordingly, Application Serial No. 4-2006-010021 filed by respondent-applicant, Kolin Philippines International, Inc., on 27 December 2002 for the mark "KOLIN" under Class09 for televisions and DVD players, is as it is hereby, REJECTED.

Let the file wrapper of the trademark "HAPPY TIME AND CHINESE CHARACTERS" subject matter of this case together with this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 09 September 2009.

ESTRELLITA BELTRAN-ABELARDO  
Director, Bureau of Legal Affairs