

LAMOYAN CORPORATION,
Opposer,

IPC No. 14-2009-00006
Case Filed: 05 January 2009
Opposition to:

- versus -

Appl'n. Serial No. 4-2007-013825
Date Filed: 17 December 2007
Trademark: "HAPI"

BRIGHTCHEM CORPORATION,
Respondent-Applicant,
x-----x

Decision No. 2009-106

DECISION

This pertains to the opposition to the registration of the mark "HAPI" bearing Application Serial No. 4-2007-013825 filed on 17 December 2007 covering the goods "dishwashing liquid, laundry detergent bar, bath soap, powder detergent, bleaching, toilet bowl cleanser" falling under class 3 of the International Classification of goods which trademark application was published for opposition in Intellectual Property Philippines (IPP) Electronic Gazette (E-Gazette), which was officially released for circulation on 29 August 2008.

The Opposer in the instant case is "LAMOYAN CORPORATION", a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with business address located at Km. 15, West Service Road, South Superhighway, Paranaque City.

On the other hand, the Respondent-Applicant is "BRIGHTCHEM CORPORATION", a corporation organized and existing under the laws of the Republic of the Philippines with business address at 862-864 Quirino Highway, Barangay Gulod, Novaliches, Quezon City.

The grounds of the opposition are as follows:

- I. Opposer is the owner of the registered trademark "HAPEE", which has come to be exclusively associated with Opposer's products in the public's mind through Opposer's continuous and exclusive use thereof in Philippine commerce for the past two (2) decades.
- II. Respondent-Applicant's mark cannot be registered because it infringes on Opposer's registered mark "HAPEE".
 - A. Respondent-Applicant's mark "HAPI" is confusingly similar to Opposer's registered trademark "HAPEE".
 - B. Respondent-Applicant's use of the mark "HAPI" on goods under Class 3 is likely to cause confusion or mistake or deceive purchasers as to the source or origin of those goods.
 - C. Opposer has not consented to Respondent-Applicant's use of the confusingly similar mark "HAPI".
- III. Respondent-Applicant's use of the mark "HAPI" for household goods, other than toothpaste, in international class 3, impedes the natural and logical expansion of Opposer's business.

Opposer submitted the following as its exhibits in support of its opposition.

Exhibit	Description
"A"	Copy of the mark "HAPI"
"B"	Certified true copy of the articles of

	incorporation of the Opposer
"C"	Certified true copy of Philippine Trademark Registration NO. 47482 for the mark "HAPEE" in class 3.
"D"	Certified true copy of Philippine Trademark Registration No. 55416 for the mark "HAPEE" in class 21
"E"	Colored print-out depicting the "HAPEE" Kiddie Toothpaste product variants
"F"	Colored print-out depicting the "HAPEE" Kiddie toothpaste variants for teens.
"G"	Colored print-out of the Specialized "HAPEE" toothpaste.
"H" to "H-5"	Original copies of Opposer's newspaper print advertising materials published in various newspapers of general circulation in the Philippines.
"I" to "I-2"	True and faithful print-outs of internet edition of news articles of the tribune, business world online and good news Pilipinas
"J" to "J-8"	Sales invoices Nos. 74545, 55618, 75942, 75967, 76313, 76328 and 76298 issued by Lamoian Corporation
"K" to "K-9"	Sales invoices issued by Lamoian corporation involving the mark "HAPPEE".
"L" to "L-9"	Sales invoices issued by Lamoian Corporation
"M" to "M-9"	Sales invoices issued by Lamoian Corporation
"N" to "N-3"	Print-out depicting products manufactured by the Opposer.

On April 3, 2009 the Respondent-Applicant filed its Verified Answer denying all the material allegations of the verified notice of opposition.

The ultimate issue to be resolved in this particular case is:

WHETHER OR NOT THE RESPONDENT-APPLICANT IS ENTITLED TO THE REGISTRATION OF THE MARK "HAPI"

The applicable provision of the law is Section 123.1 (g) and (h) of Republic Act No. 8293, which provides:



SEC.123 Registrability – 123.1. A mark cannot be registered if it:

x x x

"(d) Is identical with a registered mark belonging to a different proprietor or 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;

The contending trademarks are reproduced below for comparison and scrutiny.

	
Opposer's mark	Respondent-Applicant's mark

It is observed that the first three letters of both marks are the same and are phonetically *identical*. When the two marks are pronounced, they are exactly the same in *sound*.

A practical approach to the problem of similarity or dissimilarity is to go into the whole of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of prospective buyer. The trademark complained should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. (87 C.J.S. pp 288-291) Some factors such as sound; appearance; form, style shape, size or format; color, idea connoted by the mark; the meaning, spelling and pronunciation of the words used; and the setting in which the words appear may be considered, (87 C.J.S. pp. 291-292) for indeed, trademark infringement is a form of unfair competition (Clark vs. Manila Candy Co., 36 Phil. 100, 106; Co Tiong Sa vs. Director of Patents, 95 Phil. 1, 4).

Confusion is likely between trademarks only if their over-all presentations in any of the particulars of sound, appearance or meaning are such as would lead the purchasing public into believing that the products to which the marks are applied emanated from the same source.

In *American Wire & Cable Company vs. Director of Patents et. al.*, [31 SCRA 544] [G.R. No. L-26557, February 18, 1970], the Supreme Court ruled:

“The determinative factor in a contest involving registration of 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. In short, to constitute an infringement of an existing trademark, and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake, it would be sufficient, for purpose of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.”

In the present case, the two trademarks are the same in pronunciation, hence considered confusingly similar to each other. Where goods are advertised over the radio, similarity of sound is of special significance. Similarity of sound is a sufficient ground for holding that the two marks are confusingly similar when applied to merchandise of the same descriptive properties.

Another factor to be considered in this particular case is the goods/products covered by the competing trademarks both under Class 3 of the International Classification of goods.

In the case at bar, the competing trademarks are being used on goods falling under class 3 of the International Classification of goods and as such a danger that the purchasing public will be mistaken one from the other into the source or origin of the products/goods he intended to purchase.

Infringement of trademark depends on whether the goods of the two contending parties using the same trademark are so related as to lead the public to be deceived. The vast majority of courts today follow the modern theory or concept of “related goods” which the courts has likewise adopted and uniformly recognized and applied. 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 because they serve the same purpose or are sold in grocery stores.

Respondent-Applicant's goods have the same descriptive property as Opposer's goods. They are all ordinary household products. Respondent-Applicant's goods belong to the same class 3 of the International Classification of goods. Opposer's goods and applicant's goods are sold in the same section of the grocery store and supermarkets.

It is to be noted that the Opposer's trademark "HAPEE" has been registered with the Intellectual Property Philippines (IPP) bearing Registration No. 55416 on June 21, 1993 (Exhibit "O") and Registration NO.4 7482 on February 9, 1990 (Exhibit "C").

Section 138 of Republic Act No. 8293, provides:

"Section 138. Certificates of Registration. - 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."

The Supreme Court in the case "Chuanchow Soy & Canning Co., vs. Director of Patents and Rosario Villapania (G.R. No. L-13947, June 30, 1960)" stated:

"When one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill."

The Opposer in this particular case is the registered owner of the mark "HAPEE" and the use and adoption by the Respondent-Applicant of the mark "HAPI", which is considered confusingly similar/or substantially the same with that of the Opposer's mark, can only mean that the applicant wishes to reap the goodwill, benefit from the advertising value and reputation of the Opposer's mark.

It is therefore very clear, that approval of the Respondent-Applicant's application in question is a violation of Section 123.1 (d) of Republic Act No. 8293.

WHEREFORE, in view of all the foregoing, the opposition is, as it is hereby SUSTAINED. Consequently, Trademark Application No. 4-2007-013825 for the mark "HAPI" filed on December 17, 2007 by BRIGHTCHEM CORPORATION is, as it is hereby REJECTED.

Let the filewrapper of the trademark "HAPI" 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 August 2009.

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