

M.O.I. FOOD INTERNATIONAL	}	IPC No. 14-2004-00109
PTE., LTD.,	}	
Opposer	}	Opposition to:
	}	
-versus-	}	Appln. Ser. No. 4-2000-000126
	}	Date Filed: January 10, 2000
PAUL ANG,	}	
Respondent-Applicant.	}	TM: "VIKOR"
	}	
x-----x	}	Decision No. 2006-20

DECISION

Before us is a Verified Notice of Opposition filed by M.O.I. Foods International PTE LTD., a corporation duly organized and existing under the laws of Singapore, with principal address at 231 Pandan Loop, Singapore 128418 against the application for registration of the mark "VIKOR" filed on January 10, 2000 by Paul Ang with address at 40-C Catalina Street corner D. Tuazon, Quezon City bearing Application Serial No. 4-2000-000126 for shortening, cooking oil under class 29 of the International Classification of Goods which application was published in No. 1, Volume VII issue of the Intellectual Property Gazette released on July 7, 2004.

Opposer filed its Verified Notice of Opposition on August 6, 2004. The grounds for opposition are as follows:

"The registration of the mark "VIKOR" in the name of Respondent-Applicant will violate and contravene the provisions of Section 123 (e) (g) and (m) of the Intellectual Property Code because said mark is identical to the mark "VIKOR" owned and unabandoned by the Opposer, as to be likely, when applied to or used in connection with the goods of the Respondent-Applicant to cause confusion or mistake in the trade, or deceive purchasers thereof, to such extent that the goods covered by the said mark "VIKOR" may be mistaken by the unwary public to be that of Opposer's, or its licensees or franchisees, or that Respondent-Applicant may be mistaken as an affiliate of or in any way connected with the Opposer's business.

"The trademark "VIKOR" is known all over the world to be exclusively owned by the Opposer. Hence, the registration of the identical trademark in the name of Respondent-Applicant will be a breach of the clear provision of Article 6bis of the Paris Convention for the Protection of Industrial Property.

"The registration of the trademark "VIKOR" will cause grave and irreparable injury and damage to the Opposer within the meaning of Section 134 of the IP Code."

To support its opposition, Opposer relied upon the following facts, among others:

"1. Opposer M.O.I. FOODS INTERNATIONAL PTE LTD., is the owner of the trademark "VIKOR"

"2. Opposer has earned valuable goodwill as a result of sales generated by the products bearing the mark "VIKOR"

"3. Some time in 1999, Opposer through its sister company, Mewaholeo Industries SDN BHD of Malaysia, appointed JOTECH PACKAGING CORPORATION (hereinafter "Jotech") as its Philippine distributor for its

shortening and other products. One of the incorporators of Jotech is respondent Paul Ang.

“4. Under the Distributorship Agreement, JOTECH PACKAGING CORPORATION was receiving products with the brand “VIKOR” for distribution in the Philippines.

“5. Paul Ang does not own the “VIKOR” mark, yet on January 10, 2000, he caused the filing of the application for registration of an identical trademark in his name under the same class of goods applied by the Opposer. The act committed by the Respondent-Applicant Paul Ang is fraudulent, in breach of the trust reposed on him by his foreign principal which act is contrary to law, morals, public order and public policy as demonstrated hereunder.

“5.1. Respondent-Applicant’s business, goods and services are likely to confuse or deceive the purchasing public into believing that the business, goods and services of said Respondent-Applicant are under the sponsorship of the Opposer. Respondent-Applicant has obviously clear intentions to have a free-ride and to trade upon the popularity of Opposer’s products and goodwill associated therewith. Because of the international popularity of the Opposer’s mark “VIKOR”, it is evident that Respondent-Applicant seeks to gain immense benefits therefrom, by making it appear that it is associated with Opposer.

“5.2 Further, “an applicant who is not the owner of the mark or trade name is not entitled to register it as his/its own. This means that as importer or distributor of the goods or services of another upon which the mark or trade name is used is not the owner entitled to register the same, except when the owner has sold or assigned it to him, in which case he may apply for its registration as an assignee. It is incumbent upon him who seeks registration of a mark or trade name to prove his right thereto, including his ownership thereof, and to show compliance with the requirement of the law.

“5.3 Respondent-Applicant as an employee and Incorporator of the Philippine Distributor cannot claim the mark “VIKOR” and register it in his name. neither has Respondent shown that said mark has been sold or assigned to him by the Opposer. Clearly, Respondent-Applicant has fraudulently appropriated the trademark “VIKOR” in his name.

“5.4 The use and registration of the mark “VIKOR” in the name of Respondent-Applicant will therefore cause grave and irreparable injury to the Opposer within the meaning of the IP code.

“5.5 To allow Respondent to register the mark is contrary to morals. Morals deal with right and wrong and with human conscience. Morals may be considered as meaning good customs or those generally accepted principles of morality. Respondent Paul Ang’s act of registering the mark of his Principal without its consent is deceitful and contrary to good customs and morals.

“5.6 To allow Paul Ang to register the mark “VIKOR” is also contrary to public order. Public order deals with the public

weal and is synonymous with public policy. By allowing and registering in the name of Paul Ang the mark "VIKOR" is tantamount to encouraging fraud which is against the public policy.

"5.7 Respondent-Applicant's application for the mark "VIKOR" is tantamount to fraud as the use of the said mark on the goods described in the application is clearly proscribed under the Intellectual Property Code."

A Notice to Answer was then issued by this Office on August 23, 2004 and served through registered mail to Respondent-Applicant on August 25, 2004 directing him to file his Answer within fifteen (15) days from receipt of the notice. However, Respondent-Applicant failed to file his Answer within the reglementary period.

There being no motion to filed by Opposer to declare Respondent-Applicant in default for failure to file the Answer, this Office *motu proprio* declared Respondent-Applicant in default on June 17, 2005 under Order No. 2005-384. Said Order also allowed Opposer to present its evidence *ex parte*.

On the initial *ex parte* presentation of Opposer's evidence on August 16, 2005, Exhibits "A" to "W" inclusive of sub-markings consisting of the Special Power of Attorney, Affidavit-Testimony of Cheo Seng Jin, listings of active registrations and pending applications for registration, Certificate of Registration of Opposer in different countries were presented and marked. However, due to the implementation of Office Order No. 79 on September 1, 2005 prescribing therein the summary ruled on Inter Partes cases, Opposer was directed to submit all its evidence in accordance with Section 7 and subsection 7.1 of Office Order No. 79 under Order No. 2005-864 dated October 11, 2005. On January 23, 2005 Opposer submitted its Compliance submitting as its evidence Exhibits "A" to "I" inclusive of submarkings consisting of the same Special Power of Attorney and Affidavit of Cheong Seng Ji including its annexes, which were already presented and marked during the *ex parte* hearing. On January 24, 2006, this Office issued Order No. 2006-152 which noted and made of record the Compliance submitted by Opposer and directed Opposer to submit its Memorandum within fifteen (15) days from receipt of the Order. On February 10, 2006, Opposer filed its Memorandum. Hence, this Decision.

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

WHETHER OR NOT RESPONDENT-APPLICANT IS ENTITLED TO THE REGISTRATION OF THE TRADEMARK "VIKOR" FOR USE ON GOODS FALLING UNDER CLASS 29.

Records would show that the trademark "VIKOR" has been registered in the name of NCH London Limited (NCH Edible Oils (U.K.) Ltd.) in different countries like Australia (Exh. C-8) Great Britain and Northern Island (Exh. C-19), Singapore (Exh. C-24), Qatar (Exh. C-28), Africa (Exh. C-33), Malaysia (Exh. C-34), Ireland (Exh. C-50), Germany (Exh. C-60), Bangladesh (Exh. C-63) Turkey (Exh. C-16) Saudi Arabia (Exh. C-21), Oman (Exh. C-31), Lebanon (Exh. C-41) Jordan (Exh. C- 43), Cyprus (Exh. C-65), among others, and later on transferred/assigned to the sister companies of Opposer, Ngo Chew Hong (Holdings) Pte. Ltd., and Ngo Chew Hong Edible Oil Pte. Ltd., (Exhibits "C-4, C-6, C-7, C-18, C-36, C-36-a, C-38, C-42, C-42-b, C-46, C-46-a). Registrations of the mark "Vikor" were further assigned to Mewah Brands (S) Pte. Ltd. (formerly M.O.I. Foods International Pte. Ltd.) in 2005 (Exhibits "D" to "D-5"). Herein Opposer was also issued a certificate of registration for the mark "Vikor" in Hongkong (Exhibit 70). Evidence will further show that the earliest registration of the mark "Vikor" was way back in 1988 (Exhibit C-3).

Furthermore, Opposer was also able to establish that Respondent-Applicant is just a mere distributor of Opposer's VIKOR products in the Philippines through Jotech Corporation, of which Respondent-Applicant is an incorporator and shareholder as evidenced by sales

confirmation (Exhibits "C-72" to "C-75"), the commercial invoices issued by Opposer to Jotech (Exhibits "C-76" to "C-79"), pro forma invoices (Exhibits "C-80" to "C-83), Import Entry Declaration (Exhibit "C-84") and Bill of Ladings (Exhibits "C-85" and "C-86"). In contrast, Respondent-Applicant's alleged first use of the subject trademark was in July 22, 2001 as indicated in his application, so much later than Opposer's first use here in the Philippines.

In the earlier case of *MARCEX COMMERCIAL CO., INC. vs. PETRA HAWPIA*, the Supreme Court held that: "The right to register trademarks, trade names and service marks by any person, corporation, partnership or association domiciled in the Philippines or in any foreign country, is based on ownership, and the burden is upon the applicant to prove such ownership.

Again, in the case of *UNNO COMMERCIAL ENTERPRISES, INC. VS. GENERAL MILLING CORPORATION, ET. AL., G.R. NO. L-28554, FEBRUARY 28, 1993* the High Court enunciated:

"The right to register trademark is based on ownership. When the applicant is not the owner of the trademark being applied for, he has no right to apply for the registration of the same. Under the Trademark Law only the owner of the trademark, trade name or service mark used to distinguish his goods, business or service from the goods, business or service of others is entitled to register the same.

The term owner does not include the importer of the goods bearing the trademark, trade name, service mark, or other mark of ownership, unless such importer is actually the owner thereof in the country from which the goods are imported. xxx

Thus, this Court has on several occasions where the applicant's alleged ownership is not shown in any Notarial document and the applicant appears to be merely an importer or distributor of the merchandise covered by said trademark, its application cannot be granted."

Clearly, applying the above-quoted jurisprudence, Respondent-Applicant being merely a distributor of the products bearing the mark "VIKOR" and not the owner of said mark, has no right whatsoever to register the same.

And finally, it must be emphasized that Respondent-Applicant, was *motu proprio* declared in default in accordance with the Regulations on Inter Partes Proceedings for his failure to file his Answer within the reglementary period (Order No. 2005-384, dated June 17, 2005). Thus, in the case of *DELIBROS HOTEL CORPORATION vs. INTERMEDIATE APPELLATE COURT, G.R. NO. L-72566. APRIL 12, 1988*, the Supreme Court stated:

"Fundamentally, default orders are taken on the legal presumption that in failing to file an answer, the defendant does not oppose the allegations and relief demanded in the complaint."

Presiding from the foregoing, considering that Respondent-Applicant did not lift a finger to file any motion after having been declared in default, it can be presumed that he has acquiesced that Opposer has the right over the trademark "VIKOR"

WHEREFORE, premises considered, the Notice of Opposition is hereby *SUSTAINED*. Consequently, application bearing Serial No. 4-2000-000126 filed on January 10, 2000 by Paul Ang is hereby *REJECTED*.

Let the filewrapper of VIKOR subject of the above-entitled 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 (BOT) for information and to update its record.

SO ORDERED.

Makati City, 29 March 2006.

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