

NGK SPARK PLUG COMPANY, LTD.,
Opposer,
- versus -

IPC 14-1999-00037

TSUANG HINE OIL SEAL CO., LTD.,
Respondent-Applicant.

Opposition to:
TM Application No. 102339
(Filing Date: 25 August 1995)

TM: "NTK and Design"

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Decision No. 2007 – 124

DECISION

This Notice of Opposition was filed by NGK Plug Co., Ltd., a corporation organized and existing under the laws of Japan, with principal address at 14-18 Takatsuji, Mizuho-ku, Nagoya, Japan against Application Serial No. 102339, for the mark "NTK & Device" to be used on goods under Class 17, particularly oil seals, filed on August 25, 1995 by Tsung Hine Oil Seal Co. Ltd., a corporation organized and existing under the laws of Taiwan, with address at 769 Chung Shan Road, Sec 2, Huatan Changhua, Taiwan, Republic of China.

The Opposer relied on the following grounds in support of its opposition:

- "6. Opposer is the lawful owner of the trademark "NTK" registered in this jurisdiction under Certificate of Registration No. 44238 dated 05 May 1989 covering international class 09, a closely-related class to Class 17. The registration is currently in force as the Tenth Anniversary Affidavit of Use was filed with the Intellectual Property Philippines (IPP) on 13 July 1999. Belatedly, Opposer has applied for registration of the same mark in International Class 7, 9 and 17, which applications are now pending at the Intellectual Property Philippines (IPP);
- "7. In addition to this Philippine registration, Opposer is the owner of various registrations in different classes, including Class 17, for the same mark in forty-five (45) countries worldwide, with Opposer owning more than one registration for the same mark in about twenty-six (26) of these 45 countries.
- "8. The Opposer was the first to adopt and use the above-mentioned trademark in actual trade and commerce for various international classes throughout the world and was in fact first used by Opposer in commerce in the Philippines on 01 January 1984.
- "9. Registration of the mark "NTK & DEVICE" in favor of Respondent-Applicant will be violative of Section 123.1 (d) & (e) of Republic Act No. 8293, the pertinent provision of which reads:

"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 a mark with an earlier filing of priority date, 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.

(e) Is identical with, or confusingly similar to, or constitute a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

“10. Additionally, being internationally well-known, Opposer’s mark is protected not only under Section 123 (e) of Republic Act No. 8293, but likewise under Article 6bis of the Paris Convention for the Protection of Industrial Property. Said provision is quoted in part below:

x x x

Article 6bis

(1) The countries of the Union undertake, ex-officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and prohibit the use of a trademark which constitute a reproduction, an imitation, or a translation liable to create confusion, of the country of registration or used to be well-known in the country as being already the mark of a person entitled to the benefits of this convention and used for identical or similar goods. These provisions shall also be apply when the essential part of the mark constitutes a reproduction of any such

Well-known mark or an imitation liable to create confusion therewith.

“11. Equally fatal to Respondent-Applicant’s application is the fact that under Article 6bis septies of the same Paris Convention, the unauthorized filing of an agent or representative, in its own name, of an application for the registration of a mark owned by another person, is prohibited, with the true owner of the mark granted the right to either oppose the registration, petition the cancellation of the registration, or compel the assignment of the mark in his/its favor. Quoted below is the full text of said provisions for immediate reference:

x x x

Article 6 septies

(1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor’s authorization, for the registration of the mark in his won name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law or the country so allows, the assignment in his favor of the said

registration, unless such agent or representative justifies his action.

x x x

“12. It is clear from the records that Opposer never authorized Respondent-Applicant to file an application for the Mark “NTK & DEVICE” in its (Respondent-Applicant’s) own name.

“13. Clearly then *Respondent-Applicant’s* application for registration of the same mark is manifestly a flagrant and slovenly attempt to ride on the popularity of Opposer’s mark, and is calculated to device and sow confusion in the ranks of the buying public. Worse, there is evident bad faith in Respondent-Applicant’s act (of applying for registration) as the same was committed during the subsistence of a licensing agreement between itself and Opposer, which licensing agreement did not grant Respondent-Applicant the right- without authorization- to apply for registration of the mark in its own name.

There was, in effect, an unwarranted abuse of confidence, even deceit, in seeking registration for the mark owned by Opposer. In fact, elsewhere in other jurisdictions, Opposer has successfully concluded, or at least, initiated, opposition/cancellation proceedings for the aforementioned mark similarly filed, without authority, by Respondent-Applicant’s (supra).

“14. Over the years *Opposer’s* mark has gained distinction and earned tremendous goodwill not only in the Philippines but throughout the world. Allowing *Respondent-Applicant’s* application to mature into a registration will undoubtedly be injurious to *Opposer’s* lawful interest which it has painstakingly cultivated throughout the years.

“15. Attached and which heretofore constitute integral parts of the Notice of Opposition, are the following documentary evidence in support thereof.

“15.1 A copy of Opposer’s Philippine Certified of Registration No. 44238 for the mark “NTK” issued by the Bureau of Patents, Trademarks and Technology Transfer, marked as Annex “A”

“15.2 Copies of the (then) BPTTT’s Acknowledgement (Page No. 2) of the Opposer’s applications in Classes 7, 9 and 17, herein marked as Annex “B”, “B-1” and “B-2”, respectively;

“15.3 A copy of the Opposer’s 10th Affidavit of use for the aforementioned mark being IPP’s official stamp of receipt dated 13 July 1999, together with the official acknowledgement of the payment of the official fee, which documents is marked as Annex “C”;

“15.4 A listing of the numerous registration worldwide of the mark “NTK” in various classes, including, but not limited to, Class 17, which is hereto marked as Annex “D” to form an integral part hereof;

“15.5 Copies of selected registrations of the same mark in different countries throughout the world, containing facsimiles of the mark in various presentations, marked as Annex “E” to “E-27”; and

- “15.6 Copy of the 1998 publication of “Famous Trademarks in Japan”, showing that indeed, Opposer’s mark is internationally well-known, herein marked as Annex “F”;
- 15.7 Copy of the Decisions of Oppositions for Publications of the Taiwan Trademark Application Nos. 755306 (old Class 49) and 755815 (old Class 6), in the name of respondent-Applicant Tsung Hine Oil, seal, and of the Notice of Cancellation for Publications of said Taiwanese registration, marked as Annex “G”;
- 15.8. Copy of the Watch Notice issued by the Compu-mark in respect of Taiwanese Trademark application Publication No. 686321 for “NTK (World)” in the name of Quanxing Oils Sealing Enterprise Co., Ltd., (former name of respondent-Applicant), and a Notice of Voluntary withdrawal of this application per Opposer’s request, marked as Annex “H”;
- 15.9. Copy of Judgment of Nullification Proceedings for the German Trademark Registration No. 2,911,322 for “NTK (World)” in the name of Respondent-Applicant, marked as Annex “I”;
- 15.10. Copy of the License Agreement in Taiwan between the parties, marked as Annex “J”.

Respondent-applicant filed its Answer on November 15, 1999 and raised the following special and affirmative defenses:

- “1. Respondent-Applicant’s Trademark sought to be registered is entirely different from the Opposer’s alleged trademark as the same covers goods falling under different class of goods and said mark was coined by Respondent-Applicant to present oil seals in 1977.
- “2. Respondent-Applicant’s Trademark is a product of the creative imagination of respondent-Applicant and the same was not copied much less used to ride on the alleged mark of Opposer if it truly exists considering that the mark has been in use twelve (12) years since 1987 in the Philippines and has acquired fame and goodwill.
- “3. The registration of Respondent-Applicant’s Trademark will not affect in any way much less cause damage to Opposer’s mark if its claim is true considering that the mark of the Opposer and that of Respondent-Applicant’s mark are different from each other in terms of type of people that purchased the goods as well as in terms of the business wherein the goods respectively represented by each are used; as well as in terms of their respective presentation and in the goods they respectively represent, in the manner by which the goods represented by the respective marks are sold or dispensed with to the buying public, in the counters through which the goods represented by each of the marks are passed to buying public, in the type of people or purchasers that buys the goods represented by each of the marks.
- “4. Respondent-Applicant trademark is more well-known in Class 17 in the local market and the same cannot be said of Opposer’s product in the same filed and vice-versa. Further, the mark has been registered in the name of Respondent-Applicant in Taiwan, in the USA, Italy, France, Denmark and Hong Kong.
- “5. The Opposer has no cause of action against Respondent-Applicant.

The pre-trial conference was initially set on January 10, 2000 but and terminated for Failure of the parties to amicably settle. After presentation of its witnesses, opposer offered the following documentary evidence:

Exhibit	Description
Exhibit "A"	Opposer's Philippines Certificate of Registration No. 44238 issued on 05 May 1989, for the mark "NTK" in Class 11 by the Trademark Registry/EDP Unit of the Intellectual Property Philippines (IPP)
Exhibit "A.1"	10 th Affidavit of Use for the registered mark subject of Exhibit "A" hereof
Exhibit "B"	Opposer's application in Class 7 for the mark "NTK" (Word)" with Serial No. 118704 filed on March 1997
Exhibit "B.1"	Opposer's application in Class 9 for the mark "NTK" (Word)" with Serial No. 118703 filed on 10 March 1997
Exhibit "B.2"	Opposer's application in Class 17 for the mark "NTK" (Word)" with Serial No. 118704 filed on 10 March 1997
Exhibit "C"	Listing of the numerous worldwide (45 countries) of the mark "NTK" in various classes, including, but not limited to, Class 17;
Exhibit "D"	Chilean Trademark Certificate of registration No. 488981 in Classes 17 and 20;
Exhibit "E"	Portuguese Trademark Certificate of Registration No. 295,682 in Class 07;
Exhibit "F"	French Trademark Certificate of Registration No. 1,339,681 in Classes 1, 7, 9, 11, 12, 17 and 19;
Exhibit "G"	German Trademark Certificate of Registration No. 39,549,886 in Class 17;
Exhibit "H"	Japanese Trademark Certificate of Registration No.1,898,879 Class 9
Exhibit "I"	Mexican Trademark Certificate of Registration No. 339,882 in Class 1,6,7, 12 and 17;
Exhibit "J"	Peruvian Trademark Certificate of Registration No.73,049 in Class 7;
Exhibit "K"	Taiwanese Trademark Certificate of Registration No.131,111 in Class 92;
Exhibit "L"	United States Trademark Certificate of Registration No.1,466,178 in Class 7,9 And 11;
Exhibit "M"	Japanese 1998 publication entitled "famous Trademark in Japan" which is a compilation of well-known trademarks published by AIPPI which is a recognized body of WTO.
Exhibit "N"	Decision Revocation of Taiwanese Registration No. 755815 in Class 17 in the name of Respondent-Applicant Tsung Hine

	Oil Seal
Exhibit "N.1"	Decision of Revocation of Taiwanese Registration No. 755306 (associated mark) in Class 17 in the name of Respondent-Applicant Tsung Hine Oil seal;
Exhibit "N.2"	Watch Notice issued by Compu-Mark in respect of Taiwanese Trademark Application Publication No. 686321 for "NTK (Word)" in the name of Quanxing Oil Sealing enterprise Co. Ltd., (former name of Respondent-Applicant);
Exhibit "N.3"	Notice of voluntary withdrawal of Taiwanese Trademark Application Publication No. 686321 for "NTK (Word)" per opposer's request;
Exhibit "O"	Judgment re: Cancellation of German Trademark Registration No. 2,911,322 for "NTK (Word) in the name of Respondent-Applicant;
Exhibit "P"	License Agreement in Taiwan between the parties
Exhibit "Q"	Affidavit of Opposer's witness, Ms, Yoshiko Ogawa
Exhibit "R"	Decision of Trademark Invalidation in Taiwan, invalidating respondent-Applicant's trademark registration upon the complaint of Opposer
Exhibit "S" to "S-8"	Affidavit of Opposer's witness, Mr. Hiroki Iwahara, including attachments

For its part, respondent-applicant offered the affidavit of witness Chen Mu Chi (Annex "A") and proffer as evidence the affidavit of his second witness Wang Ju-Yu (Annex "B").

The issues to be resolved are whether there is confusing similarity between the registered mark of opposer and respondent-applicant's mark. Corollary is whether the opposer's mark is well known.

The challenged application having been filed under the provisions of the old Trademark law or Republic Act 166, the instant case shall be decided based on the provisions thereof so as not to prejudice vested rights of the parties. The applicable provisions of Republic Act 166 provide:

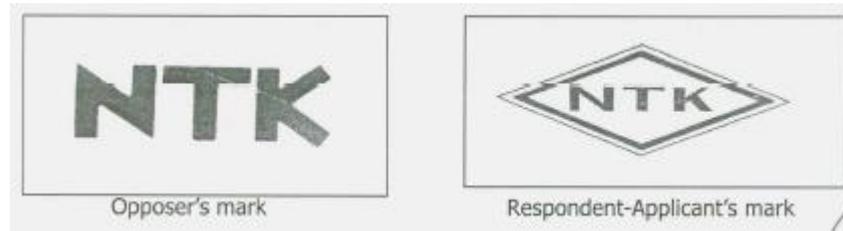
Sec. 4. Registration of Trademarks, tradenames and service mark in the principal register, - xxx the owner of a trademark, tradename or service mark, to distinguish his goods, business or services from the same goods, business or services of others shall have the right to register the same on the principal register, unless it: xxx

(d) Consists of or comprises a mark or trade name which so resembles a Mark or trade name registered in the Philippines or a mark or trade previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistakes or deceive purchasers."

Evidence show that the mark NTK has been previously registered in the Philippines under Certificate of Registration No. 44238 issued on 05 May 1989, for the mark in Class 11 which consists of "electronic circuits, particularly integrated circuits and I>C packages including

but not limited to ceramic dual packages (cerdip) containing such circuits” and first used in January 1, 1984.

The marks of the contending parties are reproduced hereunder for comparison.



In *Mighty Corporation and La Campana Fabrica de Tabacco, Inc. vs. E. & J. Gallo Winery and the Andresons Group, Inc.*, G.R. No. 154342. July 14, 2004, the Supreme Court elaborates on the standards of determining confusing similarity. The High Court ruled:

“Jurisprudence has developed two test in determining similarity and likelihood of confusion in trademark resemblance:

- (a) the Dominancy Test applied in *Asia Brewery, Inc. vs. Court of Appeals* and other cases, and
- (b) the Holistic or Totality Test used in *Del Monte Corporation vs. Court of Appeals* and its preceding cases.

The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement. If the competing trademark contains the main, essential or dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is 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 hand, 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 in both labels in order that he may draw his conclusion whether one is confusingly similar to the other.

In comparing the resemblance or colorable imitation of marks, various factors have been considered, such as the dominant color, style, size, form, meaning of letters, words, designs and emblems used, the likelihood of deception of the mark or name’s tendency to confuse and the commercial impression likely to be conveyed by the trademarks if used in conjunction with the respective goods of the parties.”

A mere comparison of the marks reveals that the letters “NTK” in both marks are identical and are depicted is very similar in font or latter style. Although the letters NTK in the mark being applied for by the respondent is encases in diamond geometric shape, the letters NTK is still the dominant feature of both marks. The visual and commercial impression retained by purchasers is still the dominant portion of the marks which are the letters “NTK”.

It is respondent-applicant’s main contention that is application for the mark NTK is for “oil seals” falling under Class 17 while opposer’s registration is for “spark plugs” under Class 11.

Respondent-applicant explains that in a motor vehicle, the electrical system where the opposer uses the spark plugs unrelated to the oil seals which from of the "oil system"

The Supreme Court in *Mighty Corporation and La Campana Fabrica de Tabacco, Inc. vs. E. & J. Gallo Winery and the Andersons Group, Inc.*, G.R. No. 154342. July 14, 2004, enumerated the criteria for determining whether the goods are related. It held:

In resolving whether goods are related, several factors come into play:

- (a) the business (and its location) to which the goods belong
- (b) the class of product to which the goods belong
- (c) the product's quality, or size, including the nature of the package, wrapper or container
- (d) the nature and cost of the articles
- (e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality
- (f) the purpose of the goods
- (g) whether the article is bought for immediate consumption, that is, day-to-day household items
- (h) the fields of manufacture
- (i) the conditions under which the article is usually purchased and
- (j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.

The wisdom of this approach is its recognition that each trademark infringement case presents its own unique set of facts. No single factor is preeminent, nor can the presence or absence of one determine, without analysis of the others, the outcome of an infringement suit. Rather, the court is required to sift the evidence relevant to each of the criteria. This requires that the entire panoply of elements constituting the relevant factual landscape be comprehensively examined. It is a weighing and balancing process. With reference to this ultimate question, and from a balancing of the determinations reached on all of the factors, a conclusion is reached whether the parties have a right to the relief sought.

A very important circumstance though is whether there exists a likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. The "purchaser" is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. He is "accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some person in some measure acquainted with which that design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The simulation, in order to be objectionable, must be such as appears likely to mislead the Ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase."

Although at first glance, one product is unlike the other with regard to purpose, they are still related because they are used in machines. Moreover, confusion may arise as to source. In fact the opposer has filed applications for its mark in the same category as Class 17 in March 10, 1997. (Exhibit "B"). Evidence show that the mark NTK has not only been registered in various territories abroad for goods not only under class 11 but in class 17 as well which show that the opposer has previously adopted and used the name for goods under Class 11. (Exhibits "C", "D", "E", "F", "G", "H", "I", "J" and "L"). In fact, opposer has obtained registrations in the United States France and Germany for its NTK mark for goods under class 17. It is not unlikely that clients would be misled into thinking that respondent's goods originate from the opposer.

Once again, the Court in *Might Corporation* case held:

“There are two types of confusion in trademark infringement. The first is “confusion of goods” when an otherwise prudent purchaser is induced to purchase one product in the belief that he is purchasing another, in which case defendant’s goods are then bought as the plaintiff’s and its poor quality reflects badly on the plaintiff’s reputation. The other is “confusion of business” wherein the goods of the parties are different but the defendant’s product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist.

In determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks; [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser and [d] the registrant’s express or implied consent and the other fair and equitable considerations.”

In the landmark case of *Jose P. Sta. Ana vs. Florentino Maliwat and Tiburcio S. Evalle*, in his capacity as Director of Patents, G.R. No. L-23023, August 31, 1968, the Supreme Court explains the concept of confusion as to source. It held:

“Sec 4, Rep. Act No. 166 does not require that the articles of manufacture of the previous user and the later user of the mark should possess the same descriptive properties or should fall into the same categories as to bar the latter from registering his mark in the principal register (*Chua Che vs. Phil. Patent Office, et al.*, L-18337, 30 Jan. 1965). Therefore, whether or not it is shirts and shoes have the same descriptive properties or whether or not it is the prevailing practice or the tendency of tailors and haberdashers to expand their business into shoe-making are not controlling. The meat of the matter is the likelihood of confusion, mistake or deception upon purchaser of the goods of the junior user of the mark and the goods manufactured by the previous user. Here, the resemblance or similarity of the mark “FLORMANN and the name FLORMEN and likelihood of confusion, one to the other, is admitted; therefore, the prior adopter, respondent Maliwat, has the better right to the use of the mark.

Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from actual market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade mark or tradename is likely to lead to a confusion of a source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field (see 148 ALR 56 et seq; 52 Am Jur. 576) or is in any way connected expansion of his business (v. 148 ALR., 77. 84; 52 Am. Jur. 576, 577). xxx Mere dissimilarity of goods should not preclude relief where the junior user’s goods are not too different or remote from any that the owner would be likely to make or sell: xxx (*Aunt Jemima Mills Co. vs. Rigney & Co.* LRA 1918C 1039)”

The Bureau also lends credence to the argument forwarded by opposer pointing to the trademark licensing agreement (Exhibit “P”) entered into by the parties opposer, respondent-applicant and Japan Oil Seal Industrial Corporation on November 1, 1980 in Japan. The Bureau notes provisions in the agreement categorically authorizing respondent applicant, Tsuang Hine Oil Seal Corporation, Ltd. To use the trademark “NTL” and device” on “oil seals made of rubber or of synthetic resin, O ring gaskets.” In said trademark agreement, opposer authorizes respondent to use the mark gratuitously and the parties agree that the products should be manufactured and sold only in the territory of China. We quote portions of the trademark agreement as follows:

“A agree to authorize C to use the mark “NTL” & device” (hereinafter referred to as trademark right) gratuitously which is registered under Reg. No. 13111 in the Republic of China, therefore the parties sign this Agreement in Nov. 1, 1980 under the following provisions:

Article 1

The concerned parties NGK Spark Plug Co. Ltd. (A)
Japan Oil Seal Industrial Corporation (B)
Tsuang Hine Oil Seal Corporation, Ltd. (C)

xxx

Article 3

The goods of the trademark used by C in respect of “oil seals made of rubber or of synthetic resin, O ring and gaskets.” (hereinafter referred to as “products”) should be manufactures and sold only within territory of the Republic of China. xxx

Article 5

A hereby grants C a right to use the trademark gratuitously. xxx

It may clearly be gleaned from the provisions that it is the opposer who is the owner of the mark NTK & device even with respect to use of suck mark on “oil seals” under class 17. Respondent, not being the owner has no right register the same in the Philippines. The Supreme Court in Unno Commercial Enterprises, Incorporated vs. General Milling Corporation, G.R. No. L-28554. February 28, 1983 held that “Only the owner of the mark has the right to register the same. 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.”

Also applicable is Article 6bis septies of the Paris Convention on the unauthorized filing of an agent or representative, in its own name, of an application for the registration of a mark owned by another person. The provision states:

Article 6 *septies*

(1) if the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor’s authorization, for the registration of the mark in his won name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law or the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.

Finally, opposer quotes Article 6bis of the Paris Convention for the Protection of Industrial Property in support of its contention that it is a well-known mark. The applicability of Article 6bis has been discussed in the Canon Kabushiki Kaisha vs. Court of Appeals and NSR Rubber Corporation (G.R. No. 120900, 20 July 2000).

“However, the then Minister of Trade and Industry, the Hon. Roberto V. Ongpin, issued a memorandum dated 25 October 1983 to the Director of Patents, a set guidelines in the implementation of Article 6bis of the Treaty of Paris. These conditions are:

a) the mark must be internationally known;

- b) the subject of the right must be a trademark, not a patent or copyright or anything else,
- c) the mark must be for use in the same or similar kinds of goods; and
- d) the person claiming must be the owner of the mark. (The Parties Convention Commentary on the Paris Convention. Article by Dr. Bogsch, Director General of the world Intellectual Property Organization, Geneva Switzerland, 1985)

The Bureau is not inclined to rule in opposer's favor on this issue. Evidence showed Of registration in several countries (Exhibit "C" to "L"), a publication stating that it is a famous mark (Exhibit "M") is insufficient for us to make a declaration that NTK is an internationally well-known mark.

WHEREFORE, premises considered the OPPOSITION filed by NGK SPARK PLUG, CO., LTD. is, as it is hereby, SUSTAINED. Accordingly, Application Serial No. 102339 filed by Respondent-Applicant, TSUANG HINE OIL SEAL CO., LTD, Inc. on 25 August 1995 for the registration of the mark NTK & Device for oil seals under class 17, is as it is hereby, REJECTED.

Let the filewrapper of "NTK & Device" subject matter of this case together with a copy of this Decision be forwarded to the Bureau of Trademark (BOT) for appropriate action.

SO ORDERED.

Makati City, 31 August 2007.

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