

NGO YET TE.,
Opposer,

IPC No. 14-2008-00070
Opposition to:

- versus -

Serial No.: 4-2007-009697
Date Filed: 04 September 2007

Trademark: "SPEED"

PROGRESSIVE POULTRY
SUPPLY CORP.

Respondent-Registrant,

X-----X

Decision No. 2009-92

DECISION

This pertains to a Verified Opposition filed on 28 March 2008 by herein opposer, Ngo Yet Te, the Chairman and President of WELLMAN Manufacturing, Inc., a corporation organized and existing under the laws of the Philippines with principal address at 32 Engracio Street, Marulas, Valenzuela City, Metro-Manila, against the application for registration of the trademark "SPEED" bearing Application Serial No. 4-2007-009697 filed on 04 September 2007 for goods falling under Classes 05 & 31 of the Nice Classification of Goods, for animal feeds supplement and animal feeds respectively, by respondent-applicant, Progressive Poultry Supply Corp., likewise a domestic corporation with registered address at 1013 EDSA, Quezon City.

The subject trademark application was published in the Intellectual Property Office Official Gazette which was officially released for circulation.

The legal ground for the instant opposition is stated, to wit:

"The subject mark "SPEED" is exactly the same, and even uses the same font, as the opposer's registered "SPEED" mark. If the subject mark is allowed registration, this will lead to a confusion of source, as prospective purchasers would be misled into thinking that the opposer has extended its business into the field. Thus, the subject application should be rejected."

The allegations of facts are as follows:

"2. The Opposer, since the year 1981, has been engaged in the business of manufacturing and selling laundry detergent bars, cleansing and washing detergent bar and powder, detergent powder, laundry soap, bleaching preparations, cleansing preparations, laundry bleach and washing preparations, fabric conditioner, and other laundry products.

3. As early as April 5, 2005, the Opposer filed an application for registration of the word "SPEED" as a trademark for Class 3 and was subsequently granted registration on March 5, 2007.

A copy of Trademark Certificate of Registration No. 4-2005003014 for the "SPEED" word mark in favor of the Opposer is attached herewith as Exhibit "A".

4. As early as January 25, 1989, the Opposer filed an application for registration of "SPEED & DESIGN LABEL" as a trademark for Class 3 and was subsequently granted registration on December 18, 1989.

A copy of Trademark Certificate of Registration No. 8273 for the "SPEED" in favor of the opposer is attached herewith as Exhibit "B".

5. In addition to the said trademark registrations, the Opposer has the following trademark registrations and applications for the SPEED marks:

- a) Trademark Certificate of Registration No. 4-2003-004820 for SPEED Macho "Kalamansi" and Design Consists of the Words 'SPEED Macho Kalamansi' and Design of Boomerang and Representation of Kalamansi Fruits, a copy of which is attached herewith as Exhibit "C";
- b) Trademark certificate of Registration No. 4-1999-005951 for SPEED Powder All Purpose Wash and Device, a copy of which is attached herewith as Exhibit "D";
- c) Trademark Certificate of Registration No. 4-2005-006288 for SPEED Detergent Bar with "Poser Whitener", a copy of which is attached herewith as Exhibit "E";
- d) Trademark Certificate of Registration No. 4-2005-006287 for SPEED Powder with "Power Whitener", a copy of which is attached herewith as Exhibit "F";
- e) Trademark Certificate of Registration No. 4-2003-005311 for SPEED Macho Speckled Blue Label Mark, a copy of which is attached herewith as Exhibit "G";
- f) Trademark Certificate of Registration no. 4-2004-008497 for SPEED Powder Kalamansi Label Mark, a copy of which is attached herewith as Exhibit "H";
- g) Trademark Certificate of Registration No. 4-2004-008499 for SPEED Macho Label Mark, a copy of which is attached herewith as Exhibit "I";
- h) Trademark Certificate of Registration No. 4-2002-004906 for "SPEED" Tigasin sa Pagpapaputi "Blue" & Device, a copy of which is attached herewith as Exhibit "J";
- i) Trademark Certificate of Registration No. 4-2002-004907 for "SPEED" Tigasin sa Pagpapaputi "Kalamansi", a copy of which is attached herewith as Exhibit "K";
- j) Trademark Certificate of Registration No. 4-2002-004909 for "SPEED" Tigasin sa Pagpapaputi "Speckled Blue", a copy of which is attached herewith as Exhibit "L";
- k) Trademark Certificate of Registration No. 4-2002-004910 for "SPEED" Tigasin sa Pagpapaputi "Speckled Green", a copy of which is attached herewith as exhibit "M";
- l) Trademark Certificate of Registration No. 4-2002-004908 for "SPEED" Tigasin sa Pagpapaputi "Tawas", a copy of which is attached as Exhibit "N".
- m) Trademark Certificate of Registration No. 4-2004-008501 for SPEED Powder Speckled Blue All Purpose Wash, a copy of which is attached herewith as Exhibit "O";
- n) Trademark Certificate of Registration No. 4-2004-008500 for SPEED Powder Kalamansi All Purpose Wash, a copy of which is attached herewith as Exhibit "P";
- o) Trademark Certificate of Registration No. 4-2002-004911 for New "SPEED" Powder All Purpose Wash "Kalamansi", a copy of which is attached herewith as Exhibit "Q";
- p) Trademark Certificate of Registration No. 4-2002-004913 for New "SPEED" powder All Purpose Wash "Solar Plus", a copy of which is attached herewith as Exhibit "R";

- q) Trademark Certificate of Registration no. 4-2002-004913 for New “SPEED” Powder All Purpose Was “Tawas Crystal”, a copy of which is attached herewith as Exhibit “S”;
- r) Trademark Certificate of Registration No. 4-2002-005278 for New “SPEED” Powder All Purpose Wash with Bleach, a copy of which is attached herewith as Exhibit “T”;
- s) Trademark Certificate of Registration No. 4-2002-005277 for New “SPEED” Fabric Conditioner and Device, a copy of which is attached herewith as Exhibit “U”;
- t) Trademark Certificate of Registration No. 4-2004-008498 for New SPEED Tigasin sa Kaputian Bleach with Kalamansi and Pinakamatagal Matunaw, a copy of which is attached herewith as Exhibit “V”;
- u) Trademark Certificate of Registration No. 4-2003-007750 for New “SPEED” Label Mark, a copy of which is attached herewith as Exhibit “W”;
- v) Trademark Certificate of Registration No. 4-2003-010748 for New “SPEED” Macho with Fabric Conditioner and Design, a copy of which is attached herewith as exhibit “X”;

All these trademark registrations have “SPEED” as its dominant word and feature.

6. Since its adoption in the year 1981 and its continued use in commerce up to the present day, the “SPEED” trademarks have been developed and extensively advertised by the Opposer in the Philippines.

Attached herewith as Exhibits “Y” to “Y-10” are the advertising materials of the Opposer for its “SPEED” marks.

7. The Opposer is filing this Opposition against the registration of the subject mark on the ground that it creates confusion of origin, source, and business – causing injury and damage on the original “SPEED” trademarks. The Opposer is entitled to the preservation of the valuable link between it and the public that has been created by its adoption and use of the “SPEED” trademarks on its business and products by restraining the use by the Opposer of the subject mark.

The subject mark is exactly the same, and even uses the same font, as the Opposer’s SPEED marks.

8. There is no question that the subject mark and the Opposer’s SPEED marks are exactly the same. The subject mark even uses the same font used by the Opposer’s SPEED marks. The marks are confusingly similar with each other such that an ordinary purchaser can conclude an association or relation between the marks. x x x

10. The products of the Opposer and the Respondent are both sold in supermarkets, groceries, and sari-sari stores extensively in the provinces. The parties’ goods are sold in the same distribution channels, and they have the same market. Ergo, confusion is really likely. Indubitably, if the subject mark is allowed registration, this will forestall the normal expansion of the Opposer’s business and will likely to lead to a confusion of source, as prospective purchasers would be misled into thinking that the Opposer has extended its business into the field.”

On 29 May 2008, this Bureau received respondent-applicant’s Verified Answer dated 29 May 2008 denying all the allegations contained in the Verified Opposition on the ground of lack of information to form a belief and/or conclusions of fact and or of law, and/or being misleading

statements of facts and law, setting the following Affirmative and Special Affirmative Defenses, to wit:

“2.1 The mark SPEED is used by the Respondent-applicant for goods covered by Class 5 and 31 for animal feed and animal supplements. On the other hand, opposer’s products relate to laundry soap products.

2.2 Furthermore, Animal feeds and supplements for chicken, pigs and the like are sold in specialty store such as poultry supply and/or veterinary products. They are not sold in ordinary groceries as the Opposer’s claim.

2.3 Moreover, the Respondent-Applicant, has been engaged in the business of selling poultry products and animal feeds since the 1970’s through its predecessor in interest – Progressive Poultry Supply, a single proprietorship operated by Madame TERESITA PETOBIANO, one of the members of the Board of Directors of Respondent-Corporation. Since then, the mark Progressive Poultry Supply has already gained good will in the sale and distribution of poultry products including animal feeds and animal supplements under different marks.”

3.1 Contrary to the requirements of Office No. 79 of this Honorable Office, there was no affidavit of witnesses to establish the facts alleged in the Verified Opposition.”

In opposer’s Reply to respondent-applicant’s Answer dated 29 July 2008, it stated in summary that the goodwill over “SPEED” belongs to the opposer for its laundry products. If the subject mark is allowed registration, this will forestall the normal potential expansion of the opposer’s business and will likely to lead to a confusion of source, as prospective purchasers would be misled into thinking that the opposer has extended its business into the field of poultry feeds.

On 15 September 2008, this instant case was set for Preliminary Conference but was terminated because of respondent-applicant counsel’s non-appearance. Thereupon, acting on the oral motion of opposer’s counsel during the said conference, and subsequently in Order No. 2008-1429 of this Bureau, the former’s right to submit position paper is deemed waived pursuant to Section 14.3, Office Order No. 79, series of 2005, thus, submitting this case for decision.

The issue —

Whether or not there is confusing similarity of business or origin between opposer’s various “SPEED” trademarks covering class 03 and respondent-applicant’s applied trademark “SPEED” covering classes 05 and 31 goods.

This is an opposition case which is legally anchored on confusing similarity on source or origin of identical competing trademarks because allegedly, prospective purchasers will be misled into thinking that the opposer, who is into laundry detergent bars and the like, has extended its business into the field of animal feeds and animal feed supplement, thereby causing undue advantage to the opposer.

Confusion of business, source or origin exists when, in view of the identicalness of the competing marks, one party’s goods or service, although different from that of another is such that might reasonably be assumed to originate from the latter and as to likely deceive the public into that belief that there is some business association between the parties which, in fact, is absent.

The Doctrine of Confusion of Origin is based on cogent reasons of equity and fair dealing. In most cases, confusion is determined by the similarity or competing goods. But in this particular type of confusion, based on the origin of goods, there is deemed unfair dealing even in goods which are non-competing but are so related with each other that it might reasonably be

assumed that they originate from one manufacturer. In the case of Esso Standard Eastern, Inc. v. Court of Appeals, 116 SCRA 336, it is said 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 because they serve the same purpose or are sold in groceries or flow through the same channel of trade. Thus, biscuits were held related to milk because they are both food products."

The element of relatedness of goods further finds support in Section 138., Republic Act (RA) No. 8293 or the Intellectual Property Code of the Philippines, "a certificate of registration is a prima facie evidence of the registrants ownership of the mark, and of the exclusive right to use the same in connection with the goods or services specified in the certificate and those that are related thereto."

In the instant case, both parties use an identical word mark "SPEED" or the dominant word "SPEED" in several trademark variances. Now, the resolution of this case rests on the relatedness of the goods where the mark "SPEED" is used.

As per evidence presented, opposer has several trademark registrations and applications (Exhibits "A" to "V") for class 03 goods namely laundry soap, toilet soap, detergent bar & powder, cleaning preparations, laundry preparations, washing preparations and the like. - On the other hand, the file wrapper records for the subject mark show that the application is for class 05 and 31 goods namely animal feeds, and animal feed supplement, respectively.

In consideration of the foregoing, this Bureau finds the non-relatedness of the opposer's and the respondent-applicant's good in all aspects, including goods classification, descriptive properties, characteristics or attributes.

The goods of the parties are intended for distinct purposes and as such, they are not available in the same channels of trade. Detergent powders are domestic necessities. They are sold in supermarkets and in small stores. On the other hand, animal feeds and animal feed supplements are available in pet stores or poultry supply stores. While it may be that these products are found for sale in hypermarkets and big grocery stores, they are definitely shelved in separate sections because of obvious product difference.

Opposer further argued that respondent-applicant's "SPEED" marks would forestall the normal expansion of its business. Examining the evidence of opposer, there is no proof of probable expansion of its business which since the year 1981 up to the present is still engaged in the business of manufacturing and selling laundry detergent bars, cleansing and washing detergent bar and powder, detergent powder, laundry soap, bleaching preparations, cleaning preparations, laundry preparations, laundry bleach and washing preparations, fabric conditioner, and other laundry products. Respondent-applicant's business of selling animal feed supplements and animal feeds is not a zone of potential, natural and logical expansion of opposer's business. In fact, there is no evidence that the nature of opposer's business or for instance, the purpose clause of opposer's articles of incorporation states the manufacture of animal foods and supplements as a field of business expansion to which it may engage, on which he is entitled to use his mark to the exclusion of others.

IN VIEW of all the foregoing, the instant Opposition is as, it is hereby DENIED. Consequently, trademark application bearing Serial No. 4-2007-009697 for the mark "SPEED" for classes 05 and 31 covering animal feed supplements and animal feeds, respectively filed on 04 September 2007 is hereby GIVEN DUE COURSE.

Let the file wrapper of "SPEED", subject of this case be forwarded to the Administrative Financial and Human Resource Development Service Bureau for appropriate action in accordance with this Decision with a copy furnished the Bureau of Trademarks for information and update of its record.

SO ORDERED.

Makati City, 17 July 2009.

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