

OMEGA SA (OMEGA AG) OMEGA LTD.

Opposer,

- versus -

MARCH RESOURCES
MANUFACTURING CORPORATION
Respondent-Applicant.

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IPC No. 14-2008-00108
Case Filed: 14 May 2008

Opposition to:
Appln. Serial No. 4-2007-003999
Date Filed: 19 April 2007
Trademark: "OMEGA BRAND"
SUPERIOR QUALITY LABEL MARK"

Decision No. 2009-100

DECISION

This is a Verified Notice of Opposition filed by opposer Omega SA (Omega AG) Omega Ltd.) to the application for registration of the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" bearing Application Serial No. 4-2007-003999 filed on April 19, 2007 by respondent-applicant March Resources Manufacturing Corporation covering the goods under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", class 16 for "ADHESIVE PAINT ROLLER", CLASS 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS" which application was published in the Intellectual Property Office (IPO) Electronic Gazette, which was officially released on February 22, 2008.

The Opposer is a foreign corporation organized under the laws of Switzerland, with office address at Jakob-Stampfli-Strasse 96, 2502 Biel/Bienne (Switzerland), Respondent-Applicant is a corporation with address at No. 90 Rubber Master Road, Lingunan, Valenzuela City, Metro Manila.

The grounds for the opposition to the registration of the trademark are as follows:

1. Opposer is the first to register, adopt and use the trademark "OMEGA" for goods under international classes 14 and 16, especially horological goods, in the Philippines and other countries worldwide; and therefore enjoys under Section 147 of Republic Act (R.A.) No. 8293 the right to exclude others from registering or using, in the Philippines, an identical or confusingly similar mark such as Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", class 16 for "ADHESIVE PAINT ROLLER", CLASS 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS".
2. There is a likelihood of confusion between Opposer's trademark "OMEGA" for goods under international classes 14 and 16 and Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH," class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS," class 16 for "ADHESIVE PAINT ROLLER", class 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS", because the latter is identical with Opposer's trademark "OMEGA".
3. The Opposer's "OMEGA" trademark is well-known internationally and in the Philippines, especially for horological goods, taking into account the knowledge of the relevant sector of the public, rather than the public at large, as being a trademark owned by the Opposer; hence, even assuming for the sake of argument that

horological and related products on one hand and under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "sand paper", class 7 FOR "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", class 16 for "ADHESIVE PAINT ROLLER", class 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS" on the other are not related or similar, the Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" cannot be registered in the Philippines pursuant to the express provision of Section 147.2 of R.A. 8293. There is no doubt that the use of Respondent- Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", class 16 for "ADHESIVE PAINT ROLLER", Class 17 for SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS" would indicate a connection between these goods and the Opposer. Likewise, the interests of the Opposer are likely to be damaged by Respondent-Applicant's use of the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINING WHEELS", class 16 for "ADHESIVE PAINT ROLLER", class 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS"

4. The Respondent-Applicant, by using "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" as its trademark for its goods has given them the general appearance of the products of the Opposer, which would likely influence purchasers to wrongly believe that these products originate from the Opposer, thereby deceiving the public and defrauding the Opposer of its legitimate trade hence, Respondent-Applicant is guilty of unfair competition as provided in Section 168.3 of R.A. No. 8293.
5. Respondent-Applicant, in adopting the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" for its products is likely to cause confusion, mistake, or deception as regards its affiliation, connection, or association with the Opposer, or as to the origin, sponsorship, or approval of its products by the Opposer, for which it is liable for false designation of origin, false description or representation under Section 169 of R.A. No. 8293.

Opposer relies on the following facts to support its opposition, reserving the right to present other evidence to prove these facts and others as may appear necessary or expedient in the course of the proceedings:

- 1) The Opposer is the first to adopt, use and register the "OMEGA" trademarks in the Philippines and many countries worldwide.

Opposer is the first to adopt and use its "OMEGA" trademark for goods falling under classes 14 and 16 in the Philippines and many countries around the world. Opposer has prior use and registrations for the "OMEGA" trademark in the Philippines and abroad. As a matter of fact, the trademark "OMEGA" has been used in the Philippines by the herein Opposer and its predecessors since 1906.

Opposer was issued by the IPO the following certificates of trademark registration:

TRADEMARK	REGISTRATION NO.	DATE ISSUED	CLASSES OF GOODS
OMEGA & DEVICE	4-1996-110786	September 28, 2000	16
OMEGA & DEVICE	R-1766	August 23, 1996	14

Copies of the aforementioned certificates of registration are hereto attached as Exhibits "A" and "B", respectively.

- 2) There is a likelihood of confusion between Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" and Opposer's "OMEGA" trademark.

Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" is identical, in all respects, with Opposer's "OMEGA" trademark hence, would likely influence the purchasers to believe that it belongs to the Opposer.

- 3) The Opposer's "OMEGA" trademark is well-known internationally and in the Philippines. The Opposer has obtained registrations and pending applications for its "OMEGA" trademark covering goods under international classes 14 and 16 in the Philippines and several countries around the world.

The Opposer's "OMEGA" trademark has been used, promoted and advertised for a considerable duration of time and over wide geographical areas. Opposer has invested tremendous amount of resources in the promotion of its trademark through magazines, newspapers, videos, movies, etc. In fact, the Opposer's "OMEGA" trademark has a considerable share in the market in the Philippines and in other countries. There is already a high degree of distinction of the Opposer's "OMEGA" trademark. Its products carried under said trademarks had, through the years, earned international acclaim, as well as the distinct reputation of being high quality products. As a matter of fact, Opposer's "OMEGA" watches have been used as the official timekeeper for the Olympic games several times, particularly in 1932, 1936, 1948, 1952, 1956, 1960, 1964, 1968, 1976, 1980 and 1984. Opposer's "OMEGA" watches were also used in space exploration missions, including the Apollo 11 landing on the moon whereby an "OMEGA" Speed master was worn by Neil Armstrong, the first man to walk on the moon's surface on July 21, 1969.

- 4) The use of Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS," class 16 for "ADHESIVE PAINT ROLLER", class 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS" would indicate a connection to the products covered in Opposer's "OMEGA" trademark, hence, the interests of the Opposer are likely to be damaged.

The use of the Respondent-Applicant's trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", class 16 for "ADHESIVE PAINT ROLLER," class 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS" definitely misleads the public into believing that the products originate from, or are licensed or sponsored by Opposer or that Respondent-Applicant is associated with or an affiliate of the Opposer.

Respondent-Applicant has appropriated the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" under international class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", class 16 for "ADHESIVE PAINT ROLLER", class 17 for "SEAL TAPE, TEFLON TAPE" class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS" for the obvious purpose of capitalizing upon or riding on the valuable reputation, goodwill and popularity in the international market for "OMEGA" products which Opposer gained through tremendous effort and expense over a long period of time. This clearly constitutes an invasion of Opposer's intellectual property rights.

Undoubtedly, the use of the "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" and the sale and distribution of goods falling under international classes 2, 3, 7, 16, 17 and 21 bearing the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" by the Respondent-Applicant are inflicting considerable damage to the interests of the Opposer. To allow Respondent-Applicant to register "OMEGA BRAND SUPERIOR QUALITY LABEL MARK", will constitute a mockery of our laws protecting intellectual property rights as it will legitimize Respondent-Applicant's unfair and unlawful business practice.

- 5) Five (5) labels of Opposer's "OMEGA" trademark, as actually used in commerce, which constitute the bases of its opposition, are hereto attached and made integral parts hereof as Exhibits "C" to "C-4", respectively.

On November 06, 2008, Respondent-Applicant filed its Verified Answer.

ADMISSION & DENIALS

1. Respondent-Applicant (Respondent for brevity) partially admits paragraph no. 1 of the Opposition relative to the grounds to the registration of the trademark, in so far as the subject trademark application of herein respondent.
2. Respondent specifically denies all the allegations in paragraph nos. 2, 3, 4 and 5 under the same grounds cited for in the instant Opposition.
3. Respondent partially denies paragraph no. 1 of the Opposition relative to the allegations of facts, in so far as Opposer's first registration of the latter's OMEGA trademark in the Philippines. It however specifically denies the other allegations, the truth of the matter being those stated in the Special/Affirmative Defenses hereunder.
4. It specifically denies each and every allegation in paragraph nos. 2, 3 and 4, under the same allegations of facts cited for in the instant Opposition, the truth of the matters are those stated in the Special/Affirmative Defenses hereunder.

SPECIAL / AFFIRMATIVE ALLEGATIONS AND DEFENSES

5. Respondent is engaged in the manufacture and distribution of paints, thinner, varnish (international class 2); adhesive paint roller & accessories (international class 16); micro fiber buffing pad, spray gun, grinding wheels (international class 7); seal tape, Teflon tape (international class 17); sand paper, floor sanding (international class 3).
6. On 19 April 2007, Respondent lodged an application with the Bureau of Trademarks, Intellectual Property Office, for the registration of its mark, "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" for goods stated in the foregoing paragraph. The said application was docketed as Application No. 04-2007-003999.
7. The Bureau of Trademarks found said application for trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" of Respondent to be registrable under the provisions of Republic Act No. 8293 or the Intellectual Property Code (IP Code) and allowed the publication of the application for opposition purposes.
8. On 14 May 2008, Opposer filed its Notice of Opposition with the Bureau of Legal Affairs for the registration of Respondent's subject mark.
9. Similarly, Respondent is the registered owner of the following trademarks: a) "OMEGA BRAND PAINT BRUSH LABEL MARK", Registration No. 4-2006-010812, December 30, 2007 (Exhibit "1"); b) "OMEGA AND OMEGA ICON", Registration No. 4-2003-008163, June 16, 2007 (Exhibit "2"); c) "OMEGA BRAND BUFFING PAD

LABEL MARK”, Registration No. 4-2006-010810, December 30, 2007 (Exhibit “3”); d) “OMEGA BRAND PTFE SEAL TAPE LABEL MARK”, Registration No. 4-2006-010806, December 30, 2007 (Exhibit “4”); e) “OMEGA BRAND PVC INSULATING TAPE LABEL MARK, Registration No. 4-2006-010809, December 30, 2007 (Exhibit “5”).

10. These registrations under Section 138, R.A. 8293 or IP Code, are “prima facie evidence of the validity of the registration, the registrant’s ownership of the mark, and 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.”
11. The verity is, Respondent’s subject application is connected and/or directly related to the immediately preceding registrations of respondent, which were not opposed nor questioned as there exists no legal grounds for the same.
12. As a matter of fact, the Notice of Opposition should in the first place be dismissed outright for non-compliance with the general requirements of the law. The Verification/Certification of Non-Forum Shopping is patently defective. In the said Opposition, the signatory Vice Presidents, Jean-Claude Monachon and Peter Stierli, alleged to be the authorized representatives of the Opposer corporation. However, there is no board resolution to allow the said named persons to institute the instant case, pursuant to the Corporation Code, which is the effective law of the forum. (Section 23, Corporation Code)
13. Therefore, a defective Verification/Certification of Non-Forum Shopping is tantamount to the absence thereof, which is a ground for an outright dismissal of the instant case. (Sections 4 and 5, Revised Rules of Court)
14. On the substantive aspect, Opposer has still no cause of action against Respondent and has no valid and justifiable legal ground to oppose the registration of Respondent’s “OMEGA BRAND SUPERIOR QUALITY LABEL MARK”.
15. The registration of the mark “OMEGA BRAND SUPERIOR QUALITY LABEL MARK” in the name of Respondent will not likely mislead the buying public on the nature and origin of the goods.
16. Opposer’s mark “Omega and Device” is into watches under International Class No. 14. Obviously, Respondent’s aforementioned goods do not include watches. They are not even related at all. “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 channels of trade. x x x “ (Esso Standard Eastern, Inc. v. Court of Appeals, 116 SCRA 336, 1982)
17. In this instant case, the goods of Respondent refer to hardware materials which are sold in hardware stores. Opposer’s watches on the other hand are high end body accessory which are exclusively available in watch/jewelry shops and watch sections of big department stores. It should be emphasized further that the buyers of Opposer’s goods are not the indiscriminate buyers. Opposer’s buyers take time to scrutinize and examine the products before purchasing, as the products are expensive watches. Therefore, confusion of goods and business is highly improbable.

18. Considering therefore the disparity and difference in the Opposer's and Respondent's class of consumers, channels of trade, purpose of its products, then, the likelihood of goods and origin is completely negated.
19. Relative to Opposer's goods which include pencils, pens, and others, these are not similar nor related to Respondent's goods. Respondent's goods under International Class No. 16 have no similarity in characteristics and attributes, with Opposer's goods. In fact, the latter are office and school supplies which are sold in bookstores, office and school supply section of stores. On the other hand, Respondent's goods are displayed in hardware stores.
20. Moreover, there is no confusion of goods and business because Opposer's goods consisting of pencils, pens, and others are not used in the Philippines. Opposer's conspicuous absence in the Philippine market, as shown by Opposer's evidence which appear as mere photocopies and therefore inadmissible in evidence, all in reference to watches, precludes any claim of confusion to the consumer. If at all, Opposer should have attached evidence of promotion and advertisement of use in Philippine market of its goods, pencils, pens and others.
21. Opposer's marks are not well-known marks for it failed to comply with the requirements set forth under Rule 102, Rules and Regulations on Trademarks, etc., consisting of twelve (12) criteria. Opposer simply stated that its marks are well-known without proving substantially its allegations.
22. Respondent has every right to cause the registration of the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" in the Philippines because it is the true and rightful owner of the said trademark by reason of its real, actual and absolute use of the mark in the concept of owner covering different and totally unrelated goods.
23. Respondent has in fact, built a substantial business on its goods as enumerated in the foregoing and has spent and will continue to spend considerable sums of money, time and effort in advertising and promoting its agrochemical chemicals products without having made the least attempt to palm-off its goods as emanating or associated in any way with the Opposer.

The Preliminary Conference was initially set on 14 January 2009 and was reset to 16 February 2009 wherein the Preliminary Conference was formally terminated by this Bureau upon the manifestations made by the parties of their failure to settle the case amicably.

In support of its Opposition, opposer presented in evidence Exhibits "A" to "C" inclusive of sub-markings while respondent-applicant for its defense presented in evidence Exhibits "1" to "30" inclusive of sub-markings.

The issues that this Bureau finds compelling to resolve are the following:

1. Whether respondent-applicant's mark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" is confusingly similar to opposer's trademark "OMEGA"; and
2. Whether or not opposer's mark is a well-known mark in accordance with the Intellectual Property Code and its Implementing Rules and Regulation.
3. Whether or not respondent-applicant's mark should be allowed registration;

As to the first issue, this Bureau rules in the affirmative.

The trademark of opposer and that of respondent-applicant are hereunder visually compared.



Opposer's Mark



Opposer's mark has a Greek Omega symbol above the OMEGA word and all of the letters are capitalized while respondent-applicant's mark also has an all capitalized OMEGA word with a different font and above it is an "O" symbol with a line situated almost at the bottom of the said figure, and the words superior quality brand printed much smaller and placed in between two oval spheres that encircled the OMEGA mark and the symbol above it.

A careful perusal of respondent-applicant's and opposer's respective marks shows that they are confusingly similar: The dominant feature of said marks is the root word "OMEGA". The other features of the respective marks that are dissimilar such as the fonts and the respective symbol/device above opposer's and respondent-applicant's labels, and the words superior quality brand placed in between two oval spheres that encircled the OMEGA mark and symbol found in respondent-applicant's mark are details that do not detract the dominance of the root word "OMEGA" as it is essentially the word on which the eyes focus.

Per the Dominancy Test which considers the dominant features of the competing marks, or which gives greater weight to the similarity of the appearance of the product arising from the dominant features of the mark attached to said product in determining whether such mark is confusingly similar with another mark, the root word "Omega" gives the same visual and aural impressions to the public's mind in the light of the goods to which they are used respectively by opposer and respondent-applicant (*McDonald's Corporation v. MacJoy Fastfood Corporation*, G. R. No. G.R. No. 166115, February 2, 2007; *McDonalds Corporation v. L. C. Big Mak, Inc.*, G. R. No. 143993, August 18, 2004). Such impressions shall likely confuse purchasers of the goods of either party that the business of one party originates from, or is licensed or sponsored by the other, and/or that there is some connection between opposer and respondent-applicant which, in fact, does not exist. There is confusion of business (*Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, G.R. No. L-19906, April 30, 1969). This is especially true considering that opposer's goods are identical and fall under the same class for which respondent-applicant is applying its mark: Cigarettes under Class 34. Moreover, jurisprudence provides that similarity in size, form and color, while relevant, is not conclusive. Neither duplication/imitation, or the fact that the infringing label suggests an effort to emulate, is necessary. The competing marks need only contain the main, essential or dominant features of another; and that confusion and deception are likely (*Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, supra; *Urn Hoa v. Director of Patents*, G. R. No. L-8072, October 31, 1956; *Co Tiong Sa v. Director of Patents, et al.*, G. R. No. L-5378, May 24, 1954).

As to the second issue, this Bureau rules in the negative.

Opposer did not present sufficient evidence to support its contentions that OMEGA is a well-known mark. Opposer alleged that it has obtained registration and pending applications for its "OMEGA" mark covering goods under classes 14 and 16 in the Philippines and several countries abroad and likewise contends in the same paragraph that it has a considerable share in the market in the Philippines and in other countries. However, no such proof was presented.

such as the certificates of registrations and applications from other countries around the world as well as documents to show considerable market share in the Philippines and abroad. Hence, opposer has not satisfied the requirement of Rule 102 of the Implementing Rules and Regulations of the Intellectual Property Code particularly in paragraph "b" and "e", to wit:

Rule 102. Criteria for determining whether a mark is well-known, the following criteria or any combination thereof may be taken into account:

- (b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies;
- (e) the extent to which the mark has been registered in the world;

As to the third issue, this Bureau rules in the affirmative for classes 2, 3, 7, 17, 21 except for class 16.

Opposer's goods for classes 14 (for watches) and 16 (for pencils, pens, propelling pencils, ball-point pens, and painting brushes) are so foreign, unrelated and do not serve the same purpose with those of respondent-applicant's goods for classes: 2 (for paint, thinner and varnish), 3 (for sand paper), 7 (for buffing pad, spray gun, grinding wheel) 17 (for seal tape, teflon tape), 21 (for absorbent piece of cloth used for wiping cars). The affidavit of Ms. Edith Dychiao, the General Manager of Swiss Prestige Holdings, Inc. shows in Annexes "B" series, the high end jewelry/watch stores where their products can be purchased while respondent-applicant's goods are sold and can be found only in ordinary hardware stores and not in high end jewelry/watch stores mentioned above.

Goods are so 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 store. (ESSO Standard vs. Court of Appeals, 116 SCRA 336)

For goods that are not related, the Supreme Court in the case of CANON KABUSHIKI KAISHA VS. COURT OF APPEALS AND NSR RUBBER CORPORATION, G.R. NO. 120900. JULY 20, 2000 say that:

"Undoubtedly, the paints, chemical products, toner and dyestuff of petitioner that carry the trademark CANON are unrelated to sandals, the product of private respondent. We agree with the BPTTT, following the Esso doctrine, when it noted that the two classes of products in this case flow through different trade channels. The product of petitioner are sold through special chemical stores or distributors while the products of private respondent are sold in grocery stores, sari-sari stores and department stores. Thus, the evident disparity of the products of the parties in the case at bar renders unfounded the apprehension of petitioner that confusion of business or origin might occur if private respondent is allowed to use the mark CANON."

This Bureau finds that respondent-applicant's application for class 16 for adhesive paint roller if allowed will likely cause confusion on goods and of business considering the fact that opposer has secured registration for the same class 16. Here, there is a strong possibility that would influence purchasers to wrongly believe that these products originate from opposer, thereby deceiving the public and defrauding the opposer of its legitimate trade.

R.A. 8293, otherwise known as the Intellectual Property Code of the Philippines is applicable, particularly Sec. 123, paragraph d to wit:

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

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

WHEREFORE, premises considered, the VERIFIED OPPOSITION is, as it is, hereby DENIED for goods under classes 2, 3, 7, 17, 21 and GRANTED only for goods under class 16. Consequently, Application Serial No. 4-2007 -003999 for the registration of the mark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" filed on April 19, 2007 by respondent-applicant March Resources Manufacturing Corporation, for goods under international 16 for adhesive paint roller is hereby REJECTED. Application for "OMEGA" for use on goods under International class 2 for "PAINTS, THINNER, VARNISH", class 3 for "SAND PAPER", class 7 for "BUFFING PAD, SPRAY GUN, GRINDING WHEELS", CLASS 17 for "SEAL TAPE, TEFLON TAPE" and class 21 for "ABSORBENT PIECE OF CLOTH USED FOR WIPING CARS", are hereby GIVEN DUE COURSE.

Let the filewrapper of the trademark "OMEGA BRAND SUPERIOR QUALITY LABEL MARK" subject matter under consideration be forwarded to the Bureau of Trademark (BOT) for appropriate action in accordance with this Decision.

SO OREDRED.

Makati City, 25 August 2009.

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