

PHILIPS EXPORT B.V.,  
Opposer,

INTER PARTES CASE NO. 3248

OPPOSITION TO:

- versus -

Application Serial No. 44528  
Filed : April 8, 1981  
Trademark : G-PHILIP  
Applicant : Ellen T. Ongdueco

ELLEN T. ONGDUECO,  
Respondent-Applicant.  
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DECISION NO. 89-38 (TM)  
June 13, 1989

### DECISION

On September 26, 1988, Philips Exports B.V. filed an Unverified Notice of Opposition against the registration of the trademark "G-PHILIP" for ballasts, transformers, safety switches, fuses, and lamps of all kinds in Class 9, applied for by Ellen T. Ongdueco on April 8, 1981 under Application Serial No. 44528 which was published in Volume 1, No. 6 of the Official Gazette dated August 19, 1988 and officially released on August 22, 1988.

Opposer is a foreign corporation duly organized and existing under the laws of the Netherlands, with business address at Greenewoudseweg 1, Eindhoven, The Netherlands, while Respondent-Applicant is a Filipino citizen, with business address at No. 66 Howmart Road, Baesa, Quezon City, Philippines, doing business under the style "General Philip (Phils.) Industries".

The grounds alleged in the Verified Notice of Opposition filed on November 21, 1988 are:

1. The Opposer is the owner-assignee of the trademarks "PHILIPS" covered by, among others, Certificate of Renewal Registration No. R-1651 issued on September 9, 1976; "PHILIPS" (shield emblem) covered by Certificate of Renewal Registration No. R-1674 issued on October 28, 1976, and of Applications Serial No. 50471 and 50470 for the trademark "PHILIPS" and "PHILIPS" (shield emblem), respectively, both filed on February 24, 1983 under Classes 7, 8, 9, 10, 11, 14, 16 based on Benelux Registration Nos. 377, 599 and 377, 600, respectively, while applications have already been allowed for publication on February 6, 1985 much earlier than the filing of Respondent's application.
2. The trademarks "PHILIPS" and "PHILIPS" (shield emblem) which Opposer own have been used in the Philippines by it and its predecessor in interest, N.V. Philips Gloeilampenfabriken, on ballasts transformers, safety switch, fuse, electrical lamps of all types, machines, machine tools, parts and fittings thereof, welding devices, instruments and apparatus, shaving apparatus, hair clippers, scientific, electronic, photographic, weighing, measuring, signaling and checking machines, cash registers, calculating machines, computers, etc.; surgical medical and dental instruments, etc.; installations, devices, apparatus and articles for lighting, heating, cooking, refrigerating and many others, long prior to the alleged date of first use by Respondent-Applicant of its mark "G-PHILIP" on March 6, 1980.
3. The name "PHILIPS" is the dominant word and "PHILIPS" (shield emblem) is likewise one of Opposer's trademarks. Hence, the trademark of Respondent-Applicant "G-PHILIP" is confusingly similar to the trademark of Opposer "PHILIPS" and "PHILIPS"

(shield emblem) which were duly registered with this Honorable office since as early as April 23, 1956 for both Certificates of Registration No. 5212 for "PHILIPS: and No. 5213 for "PHILIPS" (shield emblem) and such confusing similarity will cause confusion or mistake as to source or origin of the goods bearing the subject marks to the damage and prejudice of the herein Opposer.

4. The mark "G-PHILIP" of Respondent is also confusingly similar to Opposer's corporate name "PHILIPS EXPORT B.V.", the word "PHILIPS" being the dominant portion thereof, and with such similarity to its corporate name, the public will be misled into believing that the business of Respondent-Applicant is related to that of Opposer.

The Bureau sent to Respondent-Applicant on October 11, 1988 a Notice to Answer the Notice of Opposition within fifteen (15) days after receipt thereof. The records show that Respondent received said Notice on October 15, 1988 but failed to file its Answer within the reglementary period set therefor. Respondent did not also file any responsive pleading; hence, was declared in default in Order No. 89-095 dated January 31, 1989 upon motion of the Opposer.

Opposer was allowed to present its evidence ex parte on February 20, 1989 consisting of documentary exhibits "A" to "G" with sub-markings, which were all admitted in evidence for the Opposer in Order No. 89-177 dated March 9, 1989.

During the hearing, the Opposer was able to prove that:

- (1) Opposer is the owner of the trademark "PHILIPS" and "PHILIPS" (shield emblem design). It was issued Renewal Certificate of Registration No. R-1651 for the trademark "PHILIPS" on September 9, 1976 (Exh. "A") indicating therein its original Certificate of Registration No. 5212 dated April 23, 1956 and the long list of electrical goods it covered (Exhs. "A-1" and "A-2"), and was also issued Renewal Certificate of the Registration No. 1674 for the trademark "PHILIPS" (shield emblem) on October 28, 1976 (Exh. "B") indicating therein its original Certificate of Registration No. 5213 date April 23, 1956 and listing of the electric operated goods covered (Exhs. "B-1" and "B-2"). With such volume of evidence, the Bureau finds the Opposer as the prior user of the mark "PHILIPS" and "PHILIPS" (shield emblem).
- (2) The trademark "G-PHILIP" of Respondent-Applicant is confusingly similar to the Opposer's marks "PHILIPS" and "PHILIPS" (shield emblem) because the dominant word in the above marks is "PHILIP" and are also used on the same class of goods: electric operated articles (Exhs. "A", "A-1", "A-2", "B", "B-1", "B-2"; "C", "C-1", "C-2"; "D", "D-1", "D-2"; "E" and "F").

Without doubt, "PHILIP" is the dominant feature in both Respondent's and the Opposer's mark, and both are used on the same and related electrical goods. Thus, Respondent-Applicant's mark may not be registrable pursuant to Section 4 of Republic Act No. 166 as amended, which provides:

"SEC. 4. x x x. – The owner of a trademark, tradename or service-mark used to distinguish his goods, business or services from the 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 compromise a mark or tradename which so resembles a mark or tradename registered in the Philippines or a mark or tradename 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 mistake or to deceive purchasers." (Underscorings supplied)

Along this line, the Supreme Court held:

"In the case involving infringement of trademark brought before the Court, it has been consistently held that there is infringement of trademark when the use of the mark involved would be likely to cause confusion or mistake in the mind of the public or to deceive purchasers as to the origin or source of the commodity; that whether or not a trademark causes confusion and is likely to deceive the public is a question of fact which is to be resolved by applying the 'test of dominancy', meaning, if the competing trademark contains the main or essential or dominant features of the trademarks would be sufficient." (Philippine Nut Industry, Inc. vs. Standard Brands, Inc., 65 SCRA 575

It may be noted herein that Respondent-Applicant was declared in default for not having exerted any effort to pursue further its application and to defend its rights in this case.

WHEREFORE, premises considered, the herein Notice of Opposition is GRANTED. Accordingly, Application Serial No. 445289 for the registration of the mark "G-PHILIP" is REJECTED.

Let the records of the case be forwarded to the Application, Issuance and Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director