

TONG SHEN ENTERPRISE CO.,	}	IPC NO. 14-2008-00023
LTD.,	}	Date Filed : 30 January 2008
Petitioner,	}	
	}	Petition for Cancellation
- versus -	}	Reg. No. 4-2005-010326
	}	Date Issued : 15 February 2007
DYSTAR AUXILIARIES GMBH,	}	Trademark : "EVO"
Respondent-Registrant.	}	
x-----x		Decision No. 2008-170

DECISION

This pertains to a Verified Petition for Cancellation filed on 30 January 2008 by herein petitioner, Tong Shen Enterprise Co., Ltd., docketed as IPC Case No. 14-2008-00023 pertaining to the registration of the trademark "EVO" bearing Trademark Registration No. 4-2005-010326, issued on 15 February 2007 covering goods under *class 01*, namely, chemicals used in industry, namely fishing agents for textiles, to herein respondent-registrant, Dystar Auxiliaries GMBH.

Petitioner is a corporation duly organized and existing under the laws of Taiwan, Republic of China, and with principal office at 6 Chen Ayn Street, Kaoshiung, Taiwan, Republic of China.

Respondent-registrant is Dystar Auxiliaries GMBH, with address at Industriepark Hoechst, 65926 Frankfurt Am Main, Germany.

The grounds for cancellation to the registration of the subject mark are as follows:

1. Petitioner is the registered owner of the trademark "EVOBOND" in the Philippines under Registration No. 4-2001-009315 issued by the Intellectual Property Office (IPO) on March 11, 2004 and used on adhesives, instant adhesives, strong adhesives, heat-resistant adhesives, super glues, natural and synthetic resins, adhesives for use in the industry, synthetic resins for use in the manufacture of adhesives, adhesives for bill posting, adhesives for mending broken articles, adhesives for paper-hanging, cement for boots and shoes, cement for pneumatic tires, mastic for leather, leather glues and adhesives for wall tiles.
2. Petitioner is the first user of the trademark "EVOBOND" in Taiwan, Republic of China since 1994, and in the Philippines and other countries long before applicant adopted and used the mark "EVO" for its own products.
3. Petitioner is one of the world's leading manufacturers and exporters of cyanoacrylate adhesives for different purposes, providing a broad range of adhesive products covering both the industry and consumer markets. Strong and increasing worldwide market demand for Petitioner's adhesive products spurred the expansion of Petitioner's business, such that in addition to its factory in Taiwan, Petitioner successfully installed another factory in Guangdong, People's Republic of China in 1999.
4. The continued expansion and growth of Petitioner's business, particularly its use of the trademark "EVOBOND" are manifested in Petitioner's participation as exhibitor in the following renowned international trade fairs such as: (a) International Hardware Fair/Practical World in Cologne, Germany on March 5-8, 2006 and 2003; (b) Batimat (Salon International De La Construction) 2003; (c) Hardware and Home Improvement Fair in Hong Kong organized by the Hong Kong Trade Development Council in October 2003; (d) National Hardware Show

in the United States of America in August 11-13, 2002; and (e) International Hardware Fair/DIY' TEC in Germany in 2002. Petitioner, besides having its own website where its adhesive products are advertised, also advertises its products in the Euro Pages, the European Business Directory.

5. Respondent-Registrant's trademark "EVO" also for goods in class 1, so nearly resembles Petitioner's trademark "EVOBOND" as to be likely, when applied to or used in connection with the goods of Respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public and to create a connection between Respondent-applicant's goods and those of Petitioner, and will damage the latter's interest as owner of the "EVOBOND" trademark.

6. The registration and use by Respondent-Registrant of the trademark "EVO" will diminish the distinctiveness and dilute the goodwill of Petitioner's trademark "EVOBOND", which has been registered in its name in the Republic of China and in other Intellectual Property Offices worldwide, including the Philippines.

7. Respondent-Registrant's adoption of the confusingly similar trademark "EVO" for goods in class 1 is likely to indicate a connection between Respondent-applicant's goods and those of Petitioner, which has been identified as the owner of the well-known mark "EVOBOND".

8. The approval of Respondent-Registrant's trademark "EVO" is based on the representation that it is the originator, true owner and first user of the trademark, when in truth and in fact, such "EVO" mark was merely copied/derived from Petitioner's "EVOBOND" mark.

9. Respondent-Registrant's appropriation and use of the trademark "EVOBOND" infringes upon Petitioner's exclusive right to use the trademark "EVO", which is a well-known trademark protected under Sections 123.1(f), 147 and 165(2)[a] of Republic Act No. 8293, the Intellectual Property Code (the "IP Code"), Article 6bis and other provisions of the Paris Convention for the Protection of Industrial Property and Article 16(3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, to which the Philippines and Taiwan adhere.

10. The registration of the trademark "EVO" in the name of the Respondent-Registrant is contrary to the provisions of the IP Code."

The allegations of facts are as follows:

a. Petitioner adopted and has been using the trademark "EVOBOND" on quality cyanoacrylate adhesive products since 1992, long before Respondent-Registrant adopted and used the trademark "EVO". Petitioner has been commercially using the trademark "EVOBOND" more than 14 years before the appropriation and the filing of the present application for registration of the "EVO" mark by Respondent-Registrant.

b. Petitioner has adopted, used and registered the trademark "EVOBOND" for a wide range of cyanoacrylate adhesive products, which Petitioner has been actively promoting and selling in many countries around the world, including the Philippines. Petitioner has been commercially using the trademark "EVOBOND" in Taiwan, China, U.S.A., the Philippines, and other countries long before the appropriation and use of the confusingly similar mark "EVO" by the Respondent-

Registrant. In the Philippines, Petitioner subscribed its first distributor, MARCH RESOURCES MANUFACTURING CORPORATION, continuous to sell Petitioner's goods in the Philippines. By virtue of such use in the Philippines, Petitioner has strengthened its "EVOBOND" mark here for goods in class 1, and has had a reputation and goodwill amongst the public and the trademark "EVOBOND" in relation to Petitioner's goods.

c. Having regard to the existence of Petitioner's trademark "EVOBOND", any appropriation and use by the Respondent-registrant of the trademark "EVO" will cause the purchasing public to believe that the goods of the Respondent-applicant are those of, or is some way associated or connected with, or sponsored, approved and endorsed by Petitioner, particularly since Respondent-registrant has registered the "EVO" mark for similar goods in Class 1. Respondent-registrant's appropriation of the confusingly similar trademark "EVO" falsely indicates a connection between Respondent-registrant's goods and those of Petitioner, which has been identified as the owner of the well-known trademark "EVOBOND", and will damage Petitioner's interest as the registered owner of the "EVOBOND" trademark.

d. Petitioner's trademark "EVOBOND" as a well-known trademark within the meaning of Section 123.1(f) of the IP Code, Article 6bis of the Paris Convention, and Article 16(3) of the Agreement on Trade related Aspects of IP rights and is entitled to broad legal protection against unauthorized users like the respondent-registrant who has appropriated it for its own goods.

e. The registration and use of a confusingly similar trademark by Respondent-registrant will diminish the distinctiveness and dilute the goodwill of Petitioner's trademark.

f. The registration and use of an identical trademark by the Respondent-registrant will tend to deceive and/or confuse purchasers into believing that Respondent-registrant's products emanate from or are under the sponsorship of Petitioner and will damage Petitioner's interests for the following reasons:

- (i) The trademarks are confusingly similar;
- (ii) Respondent-registrant's unauthorized appropriation and use of the trademark "EVO" will dilute the petitioner's goodwill and reputation among consumers.
- (iii) Respondent-registrant intends to trade, and is trading on Petitioner's goodwill."

On 22 May 2008, respondent-registrant submitted a Manifestation or Compliance attaching its Answer to the Petitioner for Cancellation dated 22 April 2008, marked as Annex "A", and other attachments: Special Power of Attorney, Notarized Affidavit of Rafael Freitag and Notarized Affidavit of Cesario Raquena, respectively marked as Annexes "B", "C" and "D".

Respondent-registrant admitted only the allegations in paragraph 1 of the instant petition relative to petitioner's ownership of the trademark "EVOBOND" under IP Phil issued Registration No. 4-2001-009315 for the goods covered, as enumerated in paragraph 1 of the said opposition.

The following Specific Denials are enumerated as follows:

"2.1 Paragraph 5 x x x, the truth of the matter being that the two marks are distinct, phonetically and visually.

2.1.1. The Petitioner's mark is not simply EVOBOND but is in fact EVOBOND & DEVICE.

2.1.2. In point of physical appearance, both marks are distinct from one another.

2.1.3. The Respondent-Registrant's trademark EVO consists of three letters – E, V, O. On the other hand, the Petitioner's trademark EVOBOND & DEVICE consists of seven (7) letters E, V, O, B, O, N and D.

2.1.4. Whereas the Petitioner's mark EVOBOND & DEVICE is composed of stylized letters and a device and is likewise shaded, the Respondent-Registrant's trademark EVO is in plain block letters and does not consist of any device.

2.1.5. The Respondent-Registrant's trademark EVO is a single syllable trademark, while the trademark EVOBOND & DEVICE is a multi-syllable mark.

2.1.6. There are clear phonetic differences between the two (2) marks.

2.1.7. The Respondent-Registrant's trademark EVO is registered in Class 1 with this Honorable Office of the following goods: Chemicals used in industry, namely finishing agents for textiles

2.1.8. The Petitioner's trademark is registered in Class 1 for the following: Adhesives, instant adhesives, strong adhesives, heat-resistant adhesives, super glues, natural and synthetic resins, adhesives for use in the industry, synthetic resins for use in the manufacture of adhesives, adhesives for bill posting, adhesives for mending broken articles, adhesives for paper-hanging, cement for boots and shoes, cement for pneumatic tires, mastic for leather glues and adhesives for wall tiles.

2.1.9. While the goods of both the Respondent-Registrant and the Petitioner belong to Class 1, there is a clear distinction between chemicals used for textiles and a broad spectrum of adhesive products for general and industrial purposes.

2.1.10 The purchasers of goods bearing the Respondent-Registrant's trademark EVO and those bearing the Petitioner's trademark flow through different channels of trade. Respondent-Registrant's goods are available from limited sources/outlets while the goods bearing the mark of the Petitioner are available at hardware stores and home improvement stores.

2.2 Paragraph 6 x x x, the truth of the matter being that no dilution will possibly occur since the marks EVO and EVOBOND & DEVICE are distinct and different and are those alleged in paragraphs 2.1.1. to 2.1.11. which the Respondent-Registrant repleads by reference.

2.3 Paragraph 7 x x x, the truth of the matter being those alleged in paragraphs 2.1.1 to 2.1.11 which the Respondent-Registrant repleads by reference.

2.4 Paragraph 8 x x x, the truth of the matter being that the trademark EVO is a coined word, with no meaning in the English language.

2.5 Paragraph 9 x x x, the truth of the matter being that Respondent-Registrant's trademark is EVO, a wordmark and without a device.

2.6 Paragraph 10 x x x, the truth of the matter being that the registration of the mark EVO was obtained by the Respondent-Registrant after proper examination by the Bureau of Trademarks of this Honorable Office, after full compliance by the Respondent-Registrant with the provisions of the Rules and Regulations on Trademarks, Services Marks, Trade Names and Marked or Stamped Containers and in accordance with the Intellectual Property Code of the Philippines.

2.7 Paragraph 2 x x x.

2.8 Paragraph 3 x x x.

2.9 Paragraph 4 x x x.”

Respondent-Registrant further set forth the following special and affirmative defenses, to wit:

“3.3 Respondent-Registrant was thus duly granted trademark Registration No. 4-2005-010326 for “chemicals used in industry, namely finishing agents for textiles” for the trademark EVO by this Honorable Office on February 15, 2007.

3.4 The Intellectual Property Code of the Philippines and its Implementing Rules provides, on the matter of cancellation of a trademark, the Grounds for Cancellation x x x. (Intellectual Property Code of the Philippines, Sec. 151)

3.5 It is evident from the Petition for Cancellation that the Petitioner has not demonstrated how it will be damaged by the continuous registration of the Respondent-Registrant's mark EVO, particularly that:

- a. The registered mark EVO has become a generic name for the goods or services, or a portion thereof, for which it is registered;
- b. The registration of the mark EVO has been abandoned;
- c. The registration of the mark EVO was obtained fraudulently or contrary to the provisions of the IP Code of the Philippines;
- d. The registered mark EVO is being used to misrepresent the source of goods or services on or in connection with which the mark is being used or
- e. The registered owner of the mark, the herein Respondent-Registrant, failed to use the mark in the Philippines during an uninterrupted period of three (3) years without legitimate reason.

3.6 The Respondent-Registrant has been openly and continuously using the trademark EVO in the Philippines since November 05, 2007.

3.7 The Respondent-Registrant filed a Declaration of Actual Use and corresponding evidence of use with this Honorable Office on April 11, 2008 in

compliance with the Rules requiring that a Declaration of Actual Use and evidence of use be submitted within three (3) years from the date the trademark application was filed in the Philippines, and to attest to the use of the trademark EVO in the Philippines.

3.8 The instant Petition for Cancellation alleges grounds for an Opposition, not the grounds for which a Petition for Cancellation should be founded on.

3.9 From the above-mentioned facts, it is clear that the Petitioner has no basis to seek the cancellation of the Respondent-Registrant's trademark registration for EVO and that the same is an Opposition disguised as a Petition for Cancellation. Indubitably, the Petition for Cancellation states no cause of action and should consequently be dismissed by this Honorable Office.

Subsequently, Preliminary Conference was held and terminated on 21 July 2008 after counsels manifested the improbability to enter into case settlement. Thus, parties were directed to file their respective position papers and, if desired, draft decisions within a non-extendible period of ten (10) days from receipt of the order directing them to do so. This Bureau received petitioner's and respondent-registrant's Position Papers/Draft Decisions on 05 September and 26 August 2008, respectively.

The issue –

Whether or not respondent-registrant's registered trade mark "EVO" warrants cancellation under Republic Act (R.A.) No. 8293 or the Intellectual Property (IP) Code of the Philippines.

Before the substantive issues postulated and argued by both parties are resolved, this Bureau shall tackle the affirmative defense raised by respondent-registrant, to the effect that the instant petition states no cause of action and should therefore be dismissed.

Cause of action is defined as the act or omission by which a party violates a right of another. (Section 2, Rule 2, 1987 Revised Rules of Court) The three essential elements of a cause of action are: (1) the legal right of the plaintiff; (2) the correlative obligation of the defendant; and (3) the act or omission of the defendant in violation of said legal right.

It is not the absence of cause of action that is a ground for dismissal of the complaint but rather the fact that the complaint states no cause of action. "Failure to state a cause of action" refers to the insufficiency of allegation in the pleading, unlike "lack of cause of action" which refers to the insufficiency of factual basis of an action." (Bank of America NT & SA, et al vs. Court of Appeals, et al., GR No. 120135, March 31, 2003) A complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Assuming the facts that are alleged to be true, the court should be able to render a valid judgment in accordance with the prayer in the complaint. (Regino vs. Pangasinan Colleges of Science and Technology, GR No. 156109, November 18, 2004).

A perusal of the instant petition discloses sufficient allegations of petitioner's legal right upon which it may be entitled of reliefs, if legally proven ad not rebutted by evidence on the contrary. Therefore, this Bureau finds no cogent reason to dismiss this instant petition and should proceed to resolve the merits of the case.

Coming to the crux of this controversy, the instant cancellation cited in précis the following grounds for cancellation: (1) petitioner's existing trademark registration for the mark "EVOBOND & Device"; (2) petitioner's prior use of its trademarks; (3) confusing similarity of the contending marks in connection to the goods covered; and (4) petitioner's "EVOBOND & Device" is a well-known trademark.

Respondent-registrant on the other hand asseverated among others the following counter arguments: (1) the phonetic and visual differences of the contending marks; (2) the distinction between petitioner's and respondent-registrant's goods; and (3) the failure of the petition to demonstrate damage by its mark's registration.

After careful and deliberate perusal of the evidence submitted by both parties, this Bureau finds merits in the instant petition for cancellation.

Let us discuss.

In a contest involving cancellation of trademarks, it does not require that the competing trademarks be so identical as to produce actual error or mistake. It is rather sufficient that the similarity between the two trademarks or the translation thereof, is such that there is a possibility or likelihood of confusion or mistake on the part of the buying public.

The existence of confusion of trademark or the possibility of deception to the public hinges on "colorable imitation", which has been defined as "such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or trade name in their overall presentation or in their essential and substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article." (Emerald Garment Mfg. Corp. vs. Court of Appeals, 251 SCRA 600)

In resolving the issue of confusing similarity, the law and jurisprudence has developed two kinds of tests – the *Dominancy Test* as applied in a litany of Supreme Court decisions including *Asia Brewery, Inc. v Court of Appeals*, 224 SCRA 437; *Co Tiong v Director of Patents*, 95 Phil. 1; *Lim Hoa v Director of Patents*, 100 Phil. 214; *American Wire & Cable Co. v Director of Patents*, 31 SCRA 544; *Philippine Nut Industry, Inc. v Standard Brands, Inc.*, 65 SCRA 575; *Converse Rubber Corp. v Universal Rubber Products, Inc.*, 147 SCRA 154; and the *Holistic Test* developed in *Del Monte Corporation v Court of Appeals*, 181 SCRA 410; *Mead Johnson & Co. v N.V.J. Van Dorp, Ltd.*, 7 SCRA 771; *Fruit of the Loom, Inc. v Court of Appeals*, 133 SCRA 405.

As its title implies, the Test of Dominancy focuses on the similarity of the prevalent features, or the main, essential and dominant features of the competing trademarks which might cause confusion or deception.

On the other side of the spectrum, the Holistic Test, in the case of *Mighty Corporation v E & J Gallo Winery*, 434 SCRA 473, held that, "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.

The Honorable Supreme Court has consistently relied on the *Dominancy Test* in determining questions of infringement of trademark, as enunciated in the land mark case of *Mc Donald's Corporation v LC Big Mak*, 437 SCRA 10, to wit:

"This Court, however, has relied on the dominancy test rather than the holistic test. The dominancy test considers the dominant features in the competing marks in determining whether they are confusingly similar. Under the dominancy test, courts give greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, disregarding minor differences. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments."

As to what constitutes a dominant feature of a label, no set of rules can be deduced. Usually, these are signs, color, design, peculiar shape or name, or some special, easily

remembered earmarks of the brand that easily attracts and catches the eye of the ordinary consumer.

A side by side comparison of the petitioner's and respondent-registrant's trademark are shown as follows:



Petitioner's Trademark



Respondent-Registrant Trademark

Upon the foregoing, this Bureau finds petitioner's three letter prefix "EVO" from its word mark "EVOBOND & Device", with Philippine Certificate of Registration No. 4-2001-009315 (Exhibit "4"); and the word mark "EVO" of respondent-registrant, with Philippine Certificate of Registration No. 4-2005-010326 (file wrapper records), as the dominant feature in the contending marks.

Undeniably, what attracts and catches the eye of the ordinary purchaser is that three letter word or prefix "E, V, O", visually and aurally identical. Their physical appearances are virtually alike, as both marks are written in uppercase letters. They produced the same cadence when initially spoken, which under the application of the *idem sonans rule*, as illustrated in the case of *Marvex Commercial Co., Inc. vs. Hawpia & Co.*, 18 SCRA 117, states that, "similarity of sound or pronunciation and spelling may be sufficient to make two marks confusingly similar when applied to merchandise of the same descriptive properties."

The distinction pointed by respondent-registrant between the contending marks cannot independently distinguish one mark from another. The letters "BOND" in petitioner's "EVOBOND & Device" (Exhibit "4") is shaded, in contrast to the letters "EVO" in outline from giving equal emphasis to the two words. It appears that the word "EVO" is the dominant feature because the word "BOND" although forming part of the word mark "EVOBOND" denotes to describe its products. It is the word "EVO" which furnishes the indication of the origin of the goods. It is therefore the dominant feature of the marks in controversy.

The existence of the device in petitioner's trademark, described as four (4) polygons arranged parallel to the horizontal, where two polygons to the left are shaded and two polygons to the right are in outline form failed to write-off the apparent similarity, both visually and aurally. 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*, G.R. No. L-19906, April 30, 1969; *Lim 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).

Just the same, the visual and aural impressions created in the mind of the public is the confusingly similar word "EVO", as attached to parties' respective goods to effect some connection between petitioner and respondent-registrant which, in fact, does not exist. Thus, there is confusion of goods and confusion of business as enshrined in the principle laid in the case of *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, *supra*.

With respect to goods covered by the competing trademarks, *petitioner's goods* under class 1 include the following: adhesives, instant adhesives, strong adhesives, heat-resistant adhesives, super glues, natural and synthetic resins, adhesives for use in the industry, synthetic resins for use in the manufacture of adhesives, adhesives for bill posting, adhesives for mending

broken articles, adhesives for paper-hanging, cement for boots and shoes, cement for pneumatic tires, mastic for leather, leather glues and adhesives for wall tires. *Respondent-registrant's goods* likewise fall under class 1, namely chemicals used in industry, namely fishing agents for textiles.

The above-enumeration shows the relatedness of the goods. "Goods are related when they belong to the same class or have the same class or descriptive properties; when they possess the same physical attributes or essential characters with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or sold in grocery store. Thus biscuits were held related to milk because they are both food products." (American Foundries vs. Robertson, 269 USPQ 372, 381)

In the instant case, the goods belong to the same classification no.1 of goods. They have the same physical attributes or essential characteristic of chemical compounds which may be used in textile industry. Although they serve different purpose, the likelihood of business product connection is eminent because of its availability in general merchandise store or in hardware store. Thus, the belief of some business association between the parties which is likely to exist.

This legal assemblage affirms the better right of petitioner in accordance to Section 151.1 (b), R.A. 8293 in relation to Section 123.1 (d), R.A. 8293, to wit:

"Sec. 151. *Cancellation.* – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

x x x

(b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. x x x"
(Emphasis Ours.)

"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 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;"

X X X"

(Emphasis Ours.)

Opposer has sufficient legal basis under Section 123.1 (d), being the *prior filer* and *prior registrant* of a confusingly similar mark over related goods. Records show that petitioner was issued Certificate of Registration No. 4-2001-009315 for the mark "EVOBOND" on 11 March 2004, for an application filed on 12 December 2001; whereas, respondent-registrant was issued

Certificate of Registration No. 4-2005-010326 for the mark "EVO" only on 15 February 2005, for an application filed on 18 October 2005.

Finally, petitioner further seeks the declaration of well-known over its trademark "EVOBOND & Device". Unfortunately, petitioner failed to submit sufficient and eloquent proof to prove that its mark has actually gained and enjoyed a worldwide reputation internationally and in the Philippines, in accordance to The Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers, particularly Rule 102, which enshrines the criteria of a well-known mark, to wit:

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

- (a) the duration, extent and geographical area of any use of the mark, in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
- (b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applied;
- (c) the degree of the inherent or acquired distinction of the mark;
- (d) the quality-image or reputation acquired by the mark;
- (e) the extent to which the mark has been registered in the world;
- (f) the exclusivity of registration attained by the mark in the world;
- (g) the extent to which the mark has been used in the world;
- (h) the exclusivity of use attained by the mark in the world;
- (i) the commercial value attributed to the mark in the world;
- (j) the records of successful protection of the rights in the mark;
- (k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and
- (l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his mark is a well-known mark." (Emphasis Ours.)

WHEREFORE, premises considered, the instant Verified Petition for Cancellation for the trademark "EVO", is, as it is hereby, GRANTED. Consequently, Certificate of Registration No. 4-2005-010326 issued on 15 February 22005 for the trademark "EVO" in the name of Dystar Auxiliaries GMBH, is hereby ordered CANCELLED.

Let the file wrapper of this case be forwarded to the Bureau of Trademarks (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.

Makati City, 16 September 2008.

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