



OFFICE OF THE DIRECTOR GENERAL

**BINDY PARTS CORPORATION,**  
*Appellant,*

**Appeal No. 04-2013-0004**  
Application No. 4-2011-004568  
Date Filed: 19 April 2011

- versus -

Trademark: **KOYO**

**DIRECTOR OF THE BUREAU  
OF TRADEMARKS,**  
*Appellee.*

X-----X

**DECISION**

BINDY PARTS CORPORATION ("Appellant") appeals the Decision, dated 1 April 2013, sustaining the disposition in Official Action Paper No. 10 relating to the final rejection of the Appellant's application to register the mark "KOYO" for "automobile chassis components, tire rod ends, drag link kingpin kits, hub bolts goods", under Class 12.

Records show that the Appellant filed the subject trademark application on 3 May 2012. On 22 May 2012, the Examiner issued a final rejection on the ground that the mark subject of application nearly resembles the trademark "KOYO", with Registration No. 4-1997-119082 issued on 13 November 2003 in the name of JTEKT CORPORATION, covering goods under Class 12, specifically, "bearings of all kinds, sewing machines, industrial furnaces, industrial machines and instruments, power machines and instruments, pneumatic and hydraulic machines and instruments, etc." The same being said, the resemblance is likely to deceive to cause, confusion, proscribed under Section 123.1 (d), of Republic Act 8293 (IP Code).

On 16 August 2012, the Appellant filed its appeal with the Director of the Bureau of Trademarks ("Director"), to which the Examiner filed an Answer dated 25 October 2012. Appellant, in its appeal, argues that their mark is visually different from the cited mark, in that it is in all capital letters while the other mark has only the first letter capitalized. Also, Appellant argues that the label of its mark has an encircled letter "K" with the words "Hub Bolt", with a drawing thereof.

The Director, in resolving the Appeal filed by the Appellant sustained the findings and the rejection of the Examiner. The Director noted that the marks are confusingly similar, in that both mark use the word "KOYO", both have the same spelling and the same sound, and agreed with the Examiner that it is highly likely that the purchaser will be confused and expect products bearing the word "Koyo" will come from the same source of origin.

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE

Intellectual Property Center, 28 Upper Mckinley Road, Mckinley Hill Town Center  
Fort Bonifacio, Taguig City 1634 Philippines  
T: +632-2386300 • F: +632-7980114 • www.ipophil.gov.ph

Dissatisfied with the ruling, Appellant appealed to this Office on 8 May 2013 through an Appeal Memorandum. The said Memorandum alleges that the Director committed serious errors in sustaining the decision of the Examiner in Official Action Paper No. 10 which rejected with finality the trademark application of the Appellant for the mark "KOYO" due to confusing similarity. Appellant argues that it had no intention to take advantage of any good will of the aforementioned earlier registrant of the mark "KOYO". Also, Appellant reiterates most of the arguments stated by it in the appeal to the Director.

The issue in this appeal is whether the Director was correct in sustaining the final rejection of the Appellant's application to register the mark "KOYO" for resembling a registered mark belonging to a different proprietor, and the resemblance is likely to deceive or cause confusion, as proscribed under Section 123.1 [d][ii] of Republic Act No. 8293.

In this regard, Section 123.1 (d) of the IP Code provides:

Sec. 123. *Registrability.* - 123.1. A mark cannot be registered if it: XXX

(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; XXX

The Appellant's mark and the prior-registered mark cited by the Examiner are reproduced below for comparison:

*Appellant's Mark:*



*Filed on: 03 May 2012*

*Cited Prior-Registered Mark:*



*Registered on 13 November 2003*

As held by the Director in the challenged Decision, an examination of the above marks shows that the two are similar and resemble each other. The addition of terms that are descriptive or suggestive of the named goods or services, if the dominant portion of both marks are the same, will not necessarily remove the same from being confusingly similar to another mark. Moreover, the class of goods for which the Appellant's mark is to be registered belongs to the same class, which is Class 12, which is not disputed by either party. Also, due to the similarity between both marks, likelihood of confusion as to the source of origin was properly noted.

Thus, the registration of the Appellant's mark is clearly proscribed by Section 123.1 (d) of the IP Code, which provides that a mark cannot be registered if it nearly resembles a registered mark belonging to a different proprietor, as to be likely to deceive or cause confusion.

When two marks are confusingly similar, the consumers will have the impression that the goods or services covered by these marks originated from a single source or origin, or assume that one mark is just a variation of the other and there is a connection or association between the two marks and/or between the contending parties themselves, when in fact there is none. The likelihood of confusion therefore, would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, in *Converse Rubber Corporation v. Universal Rubber Products, Inc. et. al.* (G.R. No. L-27906 8 January 1987)

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Trademarks. Let a copy of this Decision be furnished also to the library of the Documentation, Information and Technology Transfer Bureau for its information and records purposes.

SO ORDERED.

11 FEB 2014 Taguig City.



**RICARDO R. BLANCAFLOR**  
Director General