



**DAIMLER AG,**

*Opposer,*

- versus -

**SANY GROUP CO. LTD.,**

*Respondent-Applicant.*

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IPC No. 14-2008-00004

Opposition to:

Appln. No.: 4-2006-009763

Date Filed: 04 Sept. 2006

Trademark: **"SANY AND DEVICE"**

Decision No. 2012 - 59

## DECISION

DAIMLER AG ("Opposer")<sup>1</sup> filed on 03 January 2008 an opposition to Trademark Application Serial No. 4-2006-009763. The application, filed by SANY GROUP CO. LTD. ("Respondent-Applicant")<sup>2</sup> on 04 September 2006, covers the mark "SANY AND DEVICE" for use on "road rollers, excavators, diggers (machines), hydraulic pumps, trailer-mounted concrete pumps (machines), truck mounted concrete pumps (machines), elevating apparatus, mixing machines, concrete mixers (machines), bulldozers, motor graders, asphalt pavers, horizontal directional drilling machines, cranes, portable, stationary and relocatable asphalt and concrete manufacturing and processing plants and parts thereof consisting of machines for the production of asphalt and concrete construction materials, rotary pile drills, milling machines, pumps (machines), extractors for mines, mine borers, drilling machines, mine-working machines, rail-laying machines, railroad constructing machines; power shovels, road making machines, pumps (parts of machines, engines or motors); belt conveyors, hydraulic controls for machines, motors and engines (except for land vehicles), hydraulic components other than hydraulic systems for vehicles, namely hydraulic valves, hydraulic cylinders and hydraulic motors"<sup>3</sup> under Class 07 of the International Classification of Goods.<sup>4</sup> The Opposer alleges the following:

"6. x x x The dominant element of Respondent-Applicant's mark is a device which is confusingly similar to the 'THREE POINTED STAR,' 'THREE POINTED STAR IN RING,' 'THREE POINTED STAR IN LAUREL WREATH' and variations thereof, owned by the Opposer, for which Opposer and its goods are internationally well-known.

"7. The registration of the mark 'Sany & Device' for goods under Class 07 in the name of Respondent-Applicant will cause grave and irreparable injury and damage to the Opposer for which reason it opposes said application based on the grounds set forth hereunder.

<sup>1</sup> A corporation organized and existing under the laws of Germany, with principal address at Epplestrasse 225, 70546 Stuttgart, Germany.

<sup>2</sup> A corporation duly organized under the laws of People's Republic of China with address at Xingsha Development Area, Changsa, Hunan Province 4010100, China.

<sup>3</sup> The application was published in the Intellectual Property Office Official Gazette, officially released for circulation.

<sup>4</sup> The Nice Classification of goods and services is for registering trademark and service marks, based on a multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

"8. Opposer is the owner of the internationally well-known trademark 'THREE POINTED STAR,' 'THREE POINTED STAR IN RING,' 'THREE POINTED STAR IN LAUREL WREATH', and its variations registered in the Philippines with the IPPhil as early as 1959, x x x.

"9. As such registered mark, these are entitled to protection in the Philippines against unauthorized use or expropriation of said mark by third parties.

"10. Opposer can look back on a tradition that stretches back over more than a hundred years and is marked by the pioneering achievements of both predecessor companies. Today, Opposer is a leading supplier of superior passenger cars, SUVs, sports tourers, minivans and pickups, and parts thereof, as well as the world's largest manufacturer of commercial vehicles and parts thereof.

"11. Opposer is the owner of several renowned automobile brands, which include Mercedes-Benz, and Maybach among others. The trademarks 'THREE POINTED STAR,' 'THREE POINTED STAR IN RING,' 'THREE POINTED STAR IN LAUREL WREATH', and its variations, are being used for passenger cars, vans, MPVs, buses and trucks as well as parts, accessories and merchandise items of the Mercedes-Benz Car Group.

"12. The Mercedes-Benz Car Group has been the world's most innovative automotive brand for more than one hundred (100) years. Today, Mercedes-Benz is regarded as the world's most successful automotive brand. Its level of technical perfection, quality standards, innovative strength and numerous automotive legends are unrivalled. The Mercedes star became the most famous automotive symbol of all and is one of the world's best-known trademarks.

"13. There is no doubt that the intentions of the Respondent-Applicant are: to ride on the goodwill of Opposer's well-known marks 'THREE POINTED STAR,' 'THREE POINTED STAR IN RING,' 'THREE POINTED STAR IN LAUREL WREATH', palm off its products as originating or affiliated with the Opposer, to deceive and cause confusion in the mind of the buying public. This is evident from the following acts of the Respondent-Applicant:

13.1 The act of making the device appear similar to Opposer's but with minor differences intended to convince the IPPhil and the courts, that there is no confusing similarity with the Opposer's well known three pointed star trademarks.

13.2 The use by the Respondent-Applicant of the Device element of its mark without the word mark 'SANY' as shown in the attached page from its website, and as depicted on its products, or a representation where the word mark 'SANY'; is considerably smaller than the device element, definitely indicates that the said device element of its mark is its dominant element, which is confusingly similar to Opposer's well-known 'THREE POINTED STAR,' 'THREE POINTED STAR IN RING,' 'THREE POINTED STAR IN LAUREL WREATH' trademarks. x x x

13.3 The incorrect description of the mark by the Respondent-Applicant, quoted below:

'The mark consists of a thin circle inside of which are three half triangles intertwined and rotated to form a triangular axis; the midpoint appears to be a white circle with three protruding lines.'

is indicative of the desire of the Respondent-Applicant to mislead and misrepresent its mark, to wit:

- (i) There is no triangular axis
- (ii) There is no 'white circle with three protruding lines' in the mark since said lines are simply spaces created by the three configurations which are claimed as half triangles.
- (iii) The device does not consist of three half triangles, since there are no such configurations shown. What is shown is a device similar to the three pointed star trademark of the Opposer's.

"14. A graphical comparison of the Opposer's marks and the Respondent-Applicant's mark clearly shows that Opposer's Three Pointed Star marks have been imitated or copied by Respondent-Applicant.

"15. The confusing similarity between Respondent-Applicant's 'SANY & DEVICE' mark and Opposer's internationally well-known trademarks 'THREE POINTED STAR', 'THREE POINTED STAR IN RING', 'THREE POINTED STAR IN LAUREL WREATH' and its variations, is highly likely to deceive the purchasers of goods on which the mark is being used, as to the origin or source of the said goods and as to the nature, quality and characteristics of the goods, to which these are affixed. Furthermore, the unauthorized use by others of a trademark similar to Opposer's trademarks, covering similar or related goods and services, will certainly dilute the distinctiveness of the alter and adversely affect the function of said trademark as an indicator of origin, and/or the quality of the product for which Opposer is known worldwide.

"16. Indeed, because of such appropriation by Respondent-Applicant of the Opposer's internationally well-known trademark and its variations, the purchasing public is likely to conclude that the products of Respondent-Applicant are affiliated with the Opposer, or are sponsored, if not manufactured, by the Opposer, and as such, are also likely to conclude that the products of Respondent-Applicant have the same superior quality as Opposer's products, thereby allowing Respondent-Applicant to have a free ride on the goodwill established by the Opposer resulting in much disadvantage to the Opposer and the consumers in general.

"17. Opposer's registration of the internationally well-known trademarks and their variations cover goods under class 07, 09, 12, 14, 16, 18, 24, 25, 28, 34 and 37.

"18. Because Opposer's marks: 'THREE POINTED STAR', 'THREE POINTED STAR IN RING', 'THREE POINTED STAR IN LAUREL WREATH' and its variations are registered in the Philippines, the registration of the mark "Sany & Device" in the same Class 7, in the name of Respondent-Applicant, will violate and contravene the provisions of Sections 123.1 (d) of Republic Act 8293.

"19. Since the subject application covers the same class of goods, if registered, the mark 'Sany & Device' will most likely mislead the public into thinking that the Respondent-Applicant's goods are being manufactured by the Opposer or are affiliated with or sponsored by the Opposer. The law is clear in prohibiting the

registration of trademarks which are identical with a registered trademark in respect of the same goods or services or closely related goods or services.

"20. Opposer's goods under Class 07 also include the genuine spare parts of motors and engines as well as accessories thereto, and are available in the Philippines through its exclusive dealer, CATS Motors, Inc. CATS Motors, Inc has a Parts Sales and Services Department which handles the after sales concerns of its clients. As proof of the Opposer's use of its well-known trademarks on goods under Class 07, attached hereto as Exhibits 'N' and all its sub-markings are photographs of the different spare parts which bear the 'THREE POINTED STAR', 'THREE POINTED STAR IN RING', 'THREE POINTED STAR IN LAUREL WREATH' trademarks and its variations, all of which are available in the Philippines through CATS Motors, Inc.

"21. Respondent-Applicant's goods under Class 07 cover different types of construction equipment which include trucks. Noteworthy is the fact that Opposer also has registration of the 'THREE POINTED STAR', 'THREE POINTED STAR IN RING', 'THREE POINTED STAR IN LAUREL WREATH' and its variations for commercial vehicles such as trucks which are likewise used for construction and other purposes.

"22. In the Philippines, the trademarks and its variations were registered as early as 6 August 1959.

"23. Opposer has obtained and continues to obtain registrations for the trademarks 'THREE POINTED STAR', 'THREE POINTED STAR IN RING', 'THREE POINTED STAR IN LAUREL WREATH' and their variations from the Intellectual property offices of various countries around the world.

"24. Opposer's trademarks and its variations have acquired immense and valuable goodwill as a result of enormous sums of money spent in advertising and promotions worldwide, including the Philippines.

"28. Opposer also maintains the website [www.daimler.com](http://www.daimler.com) where information about its history, range of products and distribution of Opposer's trademarks and their variations can be easily accessed by consumers all over the world.

"29. Opposer also maintains an official website specifically for its Mercedes Car Group products which bear the trademarks and its variations at <http://www.mercedes-benz.com>. The aforementioned website serves as a portal which lead the visitor to the various regional and international Mercedes-Benz websites that each cater to consumers of the different parts of the world.

"30. Goods under Class 07 such as the Mercedes-Benz AMG engines, genuine spare parts and accessories thereto and tools bearing the 'THREE POINTED STAR', 'THREE POINTED STAR IN A RING', 'THREE POINTED STAR IN LAUREL WREATH' and its variations are sold not only in the Philippines but also in countries across the globe.

"31. In keeping with technological advancement, genuine spare parts are likewise available online through the Mercedes-Benz Germany website called the EPC or the Electronic Parts Catalogue wherein any consumer who wants to purchase goods under Class 07, particularly spare parts bearing the trademarks and their variations, can order online and parts of the Mercedes-Benz automobiles and at the same choose any part of the world where delivery is to be

made. The Electronic Parts Catalogue (EPC) contains all available parts of the Mercedes-Benz brands for trucks, vans and cars.

"32. Opposer makes its presence known in the Philippines through its exclusive dealer CATS Motors, Inc. (hereinafter referred to as "CATS") of its automobiles. CATS has two showrooms/service centers found in EDSA Greenhills and in Fort Bonifacio Global City. By visiting said showrooms, customers can personally view, inquire about and purchase Opposer's automobiles, genuine spare parts and motors, accessories and tools bearing the Opposer's trademarks and its variations. Product brochures and catalogues pertaining to Opposer's various products and services are also available from these establishments. Furthermore, Opposer in cooperation with CATS has engaged and participated in many local events and sponsorships which aim to promote, advertise and generate publicity for its products in the Philippines.

"33. Opposer's internationally well-known marks and their variations have long become distinctive of the business and/or goods of the Opposer, through Opposer's long and exclusive use thereof in international commerce.

"34. Opposer's trademarks and their variations are well-known marks worldwide such that Courts around the world recognize that the unauthorized use thereof even for unrelated goods is likely to lead to confusion as to source.

"35. Opposer's history and of its marks and their variations are also told in a 272 page book 'Enduring Passion' (The Story of the Mercedes Benz Brand) written by Leslie Butterfield and published for worldwide distribution in 2005 by John Wiley and Sons, Ltd., Sussex, England.

"36. Respondent-applicant's appropriation of Opposer's trademarks and their variations will likely deceive the consumers as to the source of the goods and will likely attribute said goods to the Opposer.

"37. Because Opposer's marks and its variations are internationally well-known, the registration of the mark 'Sany & Device', in the name of Respondent-Applicant, will violate and contravene the provisions of Sections 123.1 (e)(f)(g) of Republic Act 8293 (the IP Code).

"38. The registration of the Respondent-Applicant's 'SANY & DEVICE' mark shall be proscribed on the ground that it dilutes the distinctiveness and good reputation of Opposer's trademark and its variations. The use of the 'SANY & DEVICE' by Respondent-Applicant on engines and motors and parts thereof as well as on trucks for construction will bring disrepute to Opposer's internationally well-known trademarks and their variations used on high performance engines, motors, genuine spare parts and tools under Class 07 as well as on high-end automobiles and trucks under Class 12.

"39. The registration of the mark 'SANY & DEVICE' in the name of the Respondent-Applicant will violate the exclusive proprietary rights of the Opposer over its own trademarks and their variations, and irreparably injure or damage the interest, business reputation and goodwill of said mark. The registration of Respondent-Applicant's mark will surely dilute the distinctiveness of Opposer's mark, thereby reducing its economic value.

"40. Registration of Respondent-Applicant's mark 'SANY & DEVICE' for goods under Class 07 such as trucks used for construction is also proscribed under

Section 123.1 (f) of the IP Code even though this Class covers goods unrelated to that of Opposer's.

"41. It is also apparent that the registration of the mark 'SANY & DEVICE' in the name of Respondent-Applicant, which mark is confusingly similar to Opposer's well-known trademarks and their variations will not only prejudice the Opposer but will also allow the Respondent-Applicant to unfairly benefit from and get a free ride on the goodwill of Opposer's well-known mark.

"42. As internationally well-known marks, 'THREE POINTED STAR', 'THREE STAR IN RING', 'THREE POINTED STAR IN LAUREL WREATH' and their variations are protected under Article 6bis of the Paris Convention."

The Opposer's evidence consists of the following:

1. Exh. "A": certified true copy of Special Power of Attorney;
2. Exhs. "B" to "B-7": certified true copies of Cert. of Reg. Nos. R-2421, R-2431, R-2424, R-2427, R-2429, R-2423, 4-1981-036795 and 4-2004-007907;
3. Exh. "B-8" & "B-9": photocopies of Cert. of Reg. Nos. R-2432 & R-2422;
4. Exh. "C": Affidavit Direct Testimony of Atty. Chrissie Ann Barredo;
5. Exhs. "C-1" to "C-7": printouts from [www.daimler.com](http://www.daimler.com) and <http://www.mercedes-benz.com> website containing information such as Opposer's corporate profile, history, range and distribution;
6. Exhs. "D" to "D-8": copies from [www.mercedes-benz.com.ph](http://www.mercedes-benz.com.ph) website on its history of company, products and brands;
7. Exhs. "E" to "E-99": certified true copy of notarized and authenticated Affidavit of Susanne Sourell, Head of Trademarks of Opposer company;
8. Exhs. "F", "F-1" & "F-3": original copy of international advertising materials of Opposer's products bearing the "THREE POINTED STAR" and its variations in Philippines;
9. Exh. "F-2": copy of Phil. Edition of Mercedes Magazine in Philippines;
10. Exhs. "G", "G-1" to "G-18": print-outs about Mercedes-Benz USA and its products;
11. Exh. "H": decision by the High Court of Delhi in the case Daimler Benz Aktiegessellschaft vs. Hybo Hindustan re: confusion of Opposer's trademarks even if not used in garments and underwear apparels;
12. Exhs. "H-1" & "H-2": Original Print-out of cases: Sony Corp. vs. Jasbir Sing Kohli, et. Al., and The Enfield India, LTd. vs. Deepak Engineerin Syndicate, et.al.;
13. Exh. "I" to "I-27": original print-out of Opposer's commercial truck in Philippine website <http://www.mercedes-benz.com.ph>;
14. Exhs. "J" to "J-2": copy of Book's cover and page with information;
15. Exhs. "K" to "K-28": printouts from official website of Mercedes-Benz USA, Mercedes-Benz Australia and Mercedes-Benz China on information and images of Opposer's products with its trademarks;
16. Exhs. "L" to "L-18": printout of the EPC Net from Mercedes-Benz Germany official website;
17. Exh. "M & sub-markings: Affidavit Direct Testimony by the executive Vice President and Chief Operations Officer of CATS of its Philippine existence;

18. Exh. "N" & sub-markings: photographs of spare parts with Opposer's trademarks and its variations;
19. Exh. "O": copy of book entitled "Enduring Passion (The Story of the Mercedes Benz Brand) by Leslie Butterfield;
20. Exhs. "P" to "P-7": comparison of competing marks appearing on trucks of both parties;
21. Exhs. "Q" to "Q24": decision by the Federal Patent Court in Germany in 05 Dec. 2007 and its English translation, canceling the Respondent-Applicant's mark for similarity to that of the Opposer;
22. Exh. "R": certification by Ms. Brenda R. Rivera;
23. Exh. "R-1": photographs in front of CATS Motors' showroom; and
24. Exh. "R-2": photograph of SANY and Device mark;
25. Exh. "S": certification of Chrissie Ann L. Barredo; and,
26. Exhs. "S-1" to "S-7": official List off the Best Global Brands of 2007.

On 26 May 2008, the Respondent-Applicant filed its Verified Answer alleging the following:

"2. Established in 1989, Respondent-Applicant is mainly engaged in the manufacture and distribution of high value construction machinery and equipment such as building machinery, road machinery, hoist and harbor machinery. It is also engaged in the manufacture of vehicles, network communication equipment, leasing, importing and exporting.

"3. Respondent-applicant owns the trademarks 'SANY', 'SANY Device' and SANY in Chinese Characters. It has obtained numerous registrations for these marks in China. A certified copy of the certificate of registration issued by the China Intellectual Property Office for the mark 'SANY & Device' in Class 07 together with the English translation is attached hereto as Annex 'B' of the Affidavit of respondent-applicant's representative Mr. Yi Xiaogang (Exhibit '8' hereof).

"4. The trademarks 'SANY' and 'SANY Device' have been recognized as well-known trademarks in China. A notarized copy of the Certificate of Well-known mark for the Sany Device in Class 07 issued by the Trademark Office of State Administration for Industry and Commerce of the People's Republic of China, together with its English translation is attached hereto as Annex 'C' of the Affidavit of respondent-applicant's representative Mr. Yi Xiaogang (Exhibit '8' hereof).

"5. Respondent-applicant has also applied for and obtained registrations for the trademarks 'SANY' and 'SANY Device' from several other countries worldwide, including but not limited to such countries as the United State of America, Korea, Laos, Nepal, Mexico, Australia, France, United Kingdom, Peru, Spain and Germany. These mark are also registered with the World Intellectual Property Office (WIPO) in both Classes 7 and 12 and attached hereto as Exhibits '9' to '12' are printouts of the WIPO trademark registration details posted in the official website of the WIPO found at its link: <http://www.wipo.int/ipdl/en/search/madrid/search-struct.jsp>. Attached also as Exhibits '13' and '14' are printouts of the trademark registration details for the mark 'SANY' and 'SANY Device' posted in the official website of the United States Patent and Trademark Office (USPTO) found at its link: <http://tess2.uspto.gov/bin/showfield?f=doc&state=8tk00f.6.1> The particulars of the various certificates of registration of the trademarks issued to respondent-applicant in Classes 7

and 12 worldwide are listed in Annex 'D' of the Affidavit (Exhibit '8' hereof) of Mr. Yi Xiaogang.

"6. It is significant to mention, for the information of this Honorable Office, that Opposer Daimler AG has also filed similar opposition cases in the courts of other countries against respondent-applicant involving the registration of its marks containing SANY Device. Among the opposition cases filed by herein Opposer were those in China, Germany, France, Iraq and Papua New Guinea. In these particular countries, the opposition of Opposer Daimler AG has been dismissed and the right of respondent to register and use the Sany Device mark has been upheld on the following grounds:

- a) Daimler AG has not demonstrated that its prior mark is notorious in respect of Class 07. The visual and phonetic difference existing between the signs are sufficient to avoid any risks of confusion.
- b) As the designated goods are valuable, the public would pay more attention when they see these goods. So the public would not be confused by these two marks.

"7. Respondent-applicant and its subsidiaries adopted the SANY device as early as 1994. The device was conceived by the respondent-applicant in order to depict to its employees and the public a symbol which is aligned to its three-pronged leadership objectives. The device consists of three interlocking number one shapes (ie. 1, 1, 1) to symbolize the company's three major goals to attain top leadership position, namely: TOP ENTERPRISE (Building first class enterprise), TOP TALENTS (Cultivating first class people), TOP CONTRIBUTION (Making first class contribution). These three enterprise aims have been widely disseminated to its various stakeholders and is written in the first paragraph of the company's profile found in its official website, a printout of which is attached as Exhibit '1' hereof. These enterprise aims are also enunciated in another section of the same website under the heading 'Enterprise Culture' with subtitle: 'Sany Mission', a printout of which is attached as Exhibit '3' hereof.

"8. With a workforce of over 21,000, Respondent-Applicant's global network covers over 130 countries, with 12 overseas affiliates. The goods bearing the mark 'SANY and Device' have been sold in China and in more than 80 other countries and regions. Pictures of some of the products of respondent-applicant bearing the said mark are shown in Annex 'A' of Exhibit '8' hereof.

"9. Respondent-Applicant has invested substantial resources to promote and distribute its goods in China and worldwide. Over the years, Respondent-Applicant's goods bearing the mark 'SANY and Device' have gained substantial goodwill and reputation. As a result of its massive sales and promotional efforts, total sales of Respondent-Applicant in 2007 reached RMB 13.5 Billion.

"10. In support of the foregoing allegations, Respondent-Applicant has attached hereto as Exhibit '8' the Affidavit of Mr. Yi Xiaogang, Legal Representative of Sany Group Co., Ltd., duly confirmed by and signed before a Notary Public, authenticated and legalized before the Philippine Consular Office in the People's Republic of China.

"11. Respondent admits that it is the applicant for the mark 'SANY and Device' under Application Serial No. 4-2006-009763 filed on September 4, 2006 under Class 7 as enumerated therein.



"12. Respondent has no knowledge or information sufficient to form a belief as to the truth of Opposer's allegations relative to its circumstances (i.e., date of incorporation, trademarks obtained, particular product lines other than luxury/passenger vehicles, volume of sales and revenues, etc.) and therefore DENIES the same.

"13. Respondent has no knowledge or information sufficient to form a belief as to the genuineness, truthfulness and authenticity of the documents attached to the Verified Notice of Opposition and therefore it reserves all objections to their admissibility.

"14. Respondent denies Opposer's allegations to the effect that Respondent-Applicant's 'SANY' and Device' mark is confusingly similar with Opposer's mark and that Opposer stands to suffer damages as a result of respondent-applicant's use thereof for being conclusions rather than statements of ultimate facts and for lack of knowledge or information sufficient to form a belief as to the truth thereof.

The Respondent-Applicant's evidence consists of the following:

1. Exhs. "1" to "7": originals of the print-outs downloaded containing information on Sany Group co. Ltd. and its products;
2. Exh. "8": legalized and authenticated Affidavit of Mr. Yi Xiaogang, with supporting Annexes "A" to "F";
3. Exhs. "9" to "12": original copies of printouts downloaded containing information from the World Intellectual Property Office on trademark registrations of the marks "SANY" and "SANY DEVICE"; and
4. Exhs. "13" & "14": originals of printouts downloaded containing information from the United States Patent and Trademark Office on trademark registrations of the marks "SANY" and "SANY DEVICE".

The issue of whether or not the Respondent-Applicant's mark is confusingly similar to the Opposer's, as shown below:



*The Opposer's "Three-Pointed Star", "Three-Pointed Star in a Ring" and Three-Pointed Star in Laurel Leaf"*



*The Respondent-Applicant's "Sany and Device"*

was already resolved by this Bureau in its Decision (No. 2007-189) on Inter Partes Case No. 14-2006-00122, an opposition case instituted by the same Opposer herein against Trademark Application Serial No. 4-2006-009764 filed by the Respondent-Applicant. In the decision, which had already become final and executory, this Bureau declared the Opposer's trademarks "Three Pointed Star", "Three Pointed Star in a Ring", and its variants as well-known marks, and that the Respondent-Applicant's mark, applied for use on goods under Class 12 namely "*buses, lorries, sports cars, motor cars, motor buses, locomotives, concrete mixing vehicles, aerial conveyor vehicles namely airplanes, lifting cars (lift cars), material transfer vehicles, and automobile bodies*", is confusingly similar to the Opposer's.


In this regard, this Bureau finds that the goods covered by the Respondent-Applicant's Trademark Application Serial No. 4-2006-009764 are similar and/or closely related to those indicated in the said party's Trademark Application Serial No. 4-2006-009763. These goods are, in turn, similar and/or closely related to the Opposer's. Thus, this Bureau sees no cogent reason to deviate from its ruling in Decision No. 2007-189.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Section 123.1, pars. (d) and (e) of the IP Code.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application No. 4-2006-009763 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 March 2012.

  
**ATTY. NATHANIEL S. AREVALO**  
Director IV  
Bureau of Legal Affairs