



EVER ELECTRICAL MANUFACTURING,
INCORPORATED,

Opposer,

- versus -

ALDRTZ CORPORATION,

Respondent-Applicant.

X-----X

IPC No. 14-2011-00310

Opposition to:

Appln. Serial No. 4-2011-001587

Date Filed: 14 February 2011

TM: "STYLIZED E"

Decision No. 2012- 61

DECISION

EVER ELECTIRAL MANUFACTURING, INC. ("Opposer")¹ on 25 July 2011, filed an opposition to Trademark Application Serial No. 4-2011-001587. The application filed by ALDRTZ CORPORATION² which covers the mark "STYLIZED E" use on "*apparatus and instruments for conducting switching, transforming, accumulating, regulating, or controlling electricity, namely, industrial lighting, lamps, bulbs, batteries and electrical appliances*" under Class 9 of the International Classification of Goods³. The Opposer alleges among other things, that the approval of the application in question is contrary to Sections 123.1 (d) and 138 of R.A. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer, as the registered owner of the trademark E AND DEVICE and EVER & E DEVICE, the approval of the application in question will violate Opposer's right to the exclusive use of its registered trademarks and cause great and irreparable damage and injury to it.

The Opposer's evidence consists of the following:

1. Exh. "A": certified copy of Opposer's Articles of Incorporation;
2. Exh. "B": certified copy of Cert. of Reg. No. 042544 for the mark "E AND DEVICE" originally issued on 27 Dec. 1988 and renewed last 27 Dec. 2008 and valid until 27 Dec. 2018, for use on "*fuses, panel switches, controls, circuit breakers, water heaters, hot water dispensers, lighting fixtures*" falling under Classes 9 and 11;
3. Exh. "C": certified copy of Cert. of Reg. No. 52449 for the trademark "EVER & E DEVICE" issued on 01 Apr. 1992 and valid twenty (20) years therefrom for use on "*panel board, safety switch, lamp ballast, fluorescent lamp, microcircuit breaker, kilowatt-hour meter, water heater, German-style water heater, immersion heater, electric kettle, express cooker, boiler, tea kettle, pressure tank, flat iron, air conditioner, lighting, arrester transformer, pressure switch, pressure gauge, electric motor, water pump motor control, water meter, forklift, pallet truck*" falling under Classes 7, 9 and 11;
4. Exhs. "D", "E", and "F": certified copies of accepted Affidavits of Use submitted 29 Apr. 1994; 22 Dec. 1999; and 22 Dec. 2004, in connection with Reg. No. 42544;

¹ A domestic corporation with principal place of business at Lot 1 Blk. 3, Star Avenue corner Interstar Street, Laguna International Industrial Park, Mamplasan, Biñan, Laguna.

² Located at 23 Alijis Murcia Road, Bacolod City, Negros Occidental 6100.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of marks concluded in 1957.

5. Exhs. "G", "H", and "I": certified copies of accepted Affidavits of Use/Declaration of Actual Use submitted on 30 Jan. 1998; 24 Mar. 2003; and 19 Feb. 2008, in connection with Reg. No. 52449;
6. Exhs. "J" and "J-9": certified copies of the Opposer's representative Invoices bearing its registered marks;
7. Exhs. "K" and "K-1": the Opposer's product catalogues;
8. Exh. "L": print-out of Respondent-Applicant's mark "STYLIZED E" as published in the e-Gazette last 06 Jun. 2011; and
9. Exh. "M": duly notarized affidavit of Vicente Go, President of the Opposer corporation.

This Bureau issued on 16 August 2011 a Notice to Answer and served a copy thereof upon the Respondent-Applicant. The Respondent-Applicant, however, did not file an answer.

It is emphasized that the essence of the trademark registration is to give protection to the owners of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is applied; to secure to him who has been instrumental in bringing into the market a superior article of merchandise; the fruit of his industry and skill; to assure the public that they are procuring the genuine article, to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product⁴. Thus, Sec. 123.1 (d) of the IP Code provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-applicant filed its trademark application on 14 February 2011, the Opposer has existing trademark registrations which are used on goods that similar and/or closely related to the goods indicated in the Respondent-Applicant's application. Reg. No. 042544, for the mark E AND DEVICE, was issued on 27 Dec. 1988 with a term of 20 years and subsequently renewed and effective until 27 December 2018, covers "fuses, panel switches, controls, circuit breakers under Class 09, and *water heaters, hot water dispensers, lighting fixtures*" under Class 11. Reg. No. 52449 for the mark EVER & E DEVICE, on the other hand, has a term of 20 years from its registration on 01 April 1992 and covers "*panel board, safety switch, lamp ballet, fluorescent lamp, minicircuit breaker, kilowatt hour meter, water heater, German-style water heater, immersion heater, electric kettle, express cooker, boiler, tea kettle, presuure tank, flat iron, air conditioner, lighting arrester, transformer, pressure switch, pressure gauge, electric motor, water pump motor control, water meter, forklift, pallet truck*" under Classes 7, 9 and 11. The Opposer's registered mark under Reg. No. 042544 is shown below:



The above figure is also the "E DEVICE" covered by Reg. No. 52449.

⁴ Pribhdas J. Mirpuri versus Court of Appeals, G.R. No. 114508, 19 November 1999.

At first glance, the Opposer's marks, particularly the "E DEVICE" appear to be different from the Respondent-Applicant's, as to visual design, to wit:



However, regardless of how the marks are presented, the fact remains that the distinctive feature of both marks, that which easily draws the eyes and the ears (when pronounced), is the letter "E". What the consumers will recall or convey to another person is the very idea or concept of the letter "E". A consumer who is not looking at the visual presentation of either the Opposer's mark or the Respondent-Applicant's mark will describe or refer to the said mark or brand name simply as "E". Thus, when a consumer is confronted with similar and closely related products placed on shelves, each piece bearing a trademark which reads as "E", confusion or mistake is likely to happen.

The competing marks need not be identical or similar in all details. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other⁵.

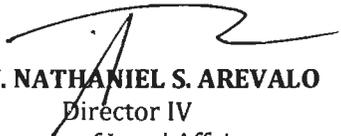
The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the answered riddle is why, of the millions of terms and combination of letters and available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark⁶. The Opposer's products bearing its "E" marks have been in the market for several decades already. Being in the same line of business and products, it is a fair inference that the Respondent-Applicant is well-aware of the Opposer's market presence.

To conclude, the Respondent-Applicant's application is proscribed by Sec. 123.1(d) of the IP Code.

WHEREFORE, premises considered, the opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No 4-2011-0015897 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 29 March 2012.


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

⁵ *Societe Des Produits Nestle , S.A v. Court of Appeals*, G.R. No.112012, 4 April 2001, 356 SCRA 207, 217

⁶ *American Wire and Cable Co. v. Director of Patents et. al* (SCRA 544), G.R. No. L-26557, 18 Feb. 1970.