OFFICE OF THE DIRECTOR GENERAL

YUAN LONGPING HIGH-TECH AGRICULTURAL CO., LTD.,
Appellant,

-versus-

DIRECTOR OF THE BUREAU OF TRADEMARKS,
Appellee.
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Appeal No. 04-2011-0004

Application No. 4-2007-010926
Date Filed: 01 October 2007

Trademark: L. P. YUAN and Device

D E C I S I O N

YUAN LONGPING HIGH-TECH AGRICULTURAL CO., LTD. ("Appellant") appeals the decision of the Director of the Bureau of Trademarks ("Director") sustaining the final rejection of the Appellant's Trademark Application No. 4-2007-010926 for the mark "L. P. YUAN and Device".

Records show that the Appellant filed on 01 October 2007 an application to register L. P. YUAN and Device for use on *plant seeds; grains (cereals); wheat; maize, flowers, natural; plants; fruit, fresh; vegetables; fresh; sample of bacterium; bean (unprocessed)* which fall under Class 31 of the Nice Classification.[1] Subsequently, the Examiner-in-Charge ("Examiner") issued an official action[2] stating that the mark may not be registered because it consists of a name identifying a particular living individual without his/her written consent and that the mark nearly resembles a registered mark belonging to a different proprietor and the resemblance is likely to deceive or cause confusion.

The Appellant filed a response letter dated 29 February 2008 submitting the written consent of Professor Yuan Longping to use his name in the Appellant's mark. The Appellant averred that there is no possibility of confusion or likelihood of deception between the registered mark cited by the Examiner and

[1] The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.
[2] Paper No. 02, Registrability Report with mailing date of 04 January 2008.

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its mark because the Filipinos are very particular in their purchase of rice grains and other related agricultural products.

The Examiner issued another official action[3] reiterating the findings of a likelihood of confusion because the Appellant's mark resembles in spelling, pronunciation and appearance a registered mark. According to the Examiner, the Appellant's mark cannot be registered because the goods of the Appellant are identical to the goods covered by the registered mark.

On the basis of the official action by the Examiner, the Appellant appealed to the Director. The Director, however, denied the appeal and sustained the rejection of the Appellant's trademark application. The Appellant filed on 03 February 2011 a "MOTION FOR RECONSIDERATION" which the Director denied for lack of merit.

Not satisfied, the Appellant filed on 02 March 2011 a "MEMORANDUM OF APPEAL" contending that the Director erred in finding a likelihood of confusion in the event that the Appellant's mark is registered. The Appellant argues that the prevalent feature of its mark is "L.P. Yuan" which is different aurally and visually from "Yuan Long Ping". The Appellant maintains that there is no confusion of goods and business because the packaging of its products is entirely different from and the logo of its mark is neither used nor indicated in the cited mark. The Appellant claims that SL Agritech, the owner of the registered mark cited by the Examiner, did not "manifest opposition but instead gave its consent to registration". According to the Appellant, the likelihood of confusion being a relative concept, cases affecting trademarks must be decided with a careful consideration of the peculiar facts in each instance.

The Director filed her "COMMENT" dated 31 March 2011 contending that "YUAN" is the most dominant feature of the Appellant's mark and that this mark and the registered mark cited by the Examiner create a commercial impression in the public's mind preventing them from differentiating one from the other, especially because both marks identify similar goods. According to the Director, a consumer would readily assume that goods being offered by the Appellant originated from the owner of the mark cited by the Examiner or vice versa. The Director maintains that trademark registration involves public interests and that the consent to use a mark issued to a junior proprietor will not suffice to allow the registration of a confusingly similar mark.

The issue in this case is whether the Director was correct in sustaining the rejection of the Appellant's application to register the mark L. P. YUAN and Device.

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[3] Paper No. 04 with mailing date of 23 May 2008.

Below are the illustrations of the Appellant's mark and the registered mark cited by the Examiner:

L.P.Yuan

Appellant's mark *Registered mark cited by the Examiner*

A scrutiny of these marks shows the presence of the term "yuan" in both marks. Moreover, the Appellant's use of "L.P." in association with "Yuan" gives the impression that L.P. refers to "LONG PING". As correctly pointed out by the Director:

> It is so, because both marks share the same word "YUAN" and, the initials "L.P." can easily be recognized as abbreviations of the word "LONG PING" found in the cited mark. Importantly, both marks create a similar commercial impression in the public's mind, which would prevent them from differentiating one from the other, specially considering that both marks identify similar goods.[4]

While it is true that there are differences in the features of the Appellant's mark and the registered mark cited by the Examiner, it is very likely that the Appellant' mark may be considered a variation of the latter mark or vice versa. This is not a remote possibility considering that these marks refer to the same class of goods. The registered mark cited by the Examiner cover the following goods falling also under Class 31 of the Nice Classification: rice, corn, grains of all kinds and other agricultural farm products, seeds, vegetables, and horticultural growths. Clearly, these goods are similar if not related to the goods covered by the Appellant's mark.

In this regard, Sec. 123.1(d) of the Intellectual Property Code of the Philippines ("IP Code") states that a mark cannot be registered if it:

> (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:

[4] COMMENT dated 31 March 2011, page 5.

(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;

Therefore, to allow the Appellant to register its mark would violate Sec. 123.1(d) of the IP Code and would negate the very essence of trademark registration. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; 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 product.[5]

In this instance, because of the similarity of the Appellants mark and the registered mark cited by the Examiner, and the use of these marks on the same class of goods, the purchasing public would associate the products bearing these marks as originating from the same source or origin. The public would be misled or be deceived that the Appellant' mark and the registered mark cited by the Examiner are owned by the same person.

The Appellant's contention that the owner of registered mark cited by the Examiner has given the consent for the Appellant to use "YUAN LONG PING" would not justify the registration of the Appellant's mark. This Office examined the alleged consent given by SL Agritech Corporation, the owner of the registered mark cited by the Examiner, and found that this consent refers to the use of the name 'YUAN LONG PING" which does not necessarily refer to the consent to the registration of the Appellant's mark.

Moreover, the rights in a mark shall be acquired through registration made validly in accordance with the provisions of the law.[6] In one case, the Supreme Court of the Philippines held that an application for registration under the Patent Law is not an ordinary litigious controversy between private parties. Public interest is involved and all questions as to whether or not the law is satisfied may be considered by the Patent Office or by the Court even though not specifically raised by either of the parties.[7]

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

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[5] Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 November 1999.
[6] IP Code, Sec. 122.
[7] Operators Incorporated vs. Director of Patents, G. R. No. L-17901, 29 October 1965.

of this Decision be furnished also the library of the Documentation, Information and Technology Transfer Bureau for its information and records purposes.

SO ORDERED.

SEP 20 2013 Taguig City

RICARDO R. BLANCAFLOR
Director General