



LEVI STRAUSS & CO,
Opposer,

IPC No. 14-2010-00213
Opposition to:

- versus -

Appln. Serial No.: 4-2010-500085
Date Filed: 22 January 2010
TM: "POCKET LABEL"

NELSON CHAN,
Respondent-Applicant.
X-----X

Decision No. 2012- 17

DECISION

Levi Strauss & Co. ("Opposer")¹ filed on September 2010 an opposition to Trademark Application Serial No. 4-2010-500085. The application, filed by NELSON CHAN ("Respondent-Applicant")², covers the mark "POCKET LABEL" for use on pants, jeans, slacks, shorts, skirts under Class 25 of the International Classification of goods.³

The Opposer alleges among other things, that it is the exclusive owner of the mark "ARCUATE DESIGN" and its variations duly registered in the Philippines for goods under Classes 9, 14, 18 and 25, and that the "ARCUATE DESIGN" trademarks are internationally-known or well-known having been registered around the world. According to the Opposer, the Respondent-Applicant's applied mark must not be registered because it is identical and/or confusingly similar with Opposer's mark registered in the Philippines and there is likelihood of confusion.

The Opposer's evidence consists of printouts of the webpage "Trademark Search" accessible through the Intellectual Property Office of the Philippines website, of Reg. No. 41996114907 for the mark "ARCUATE AND DESIGN"; Reg. No. 42004009475 and Reg. No. 42007013683 for the mark "ARCUATE DESIGN", and Reg. No. 042324 for the mark "ARCUATE/TAB/ two HORSE PATCH Reg. 042324"; the authenticated Affidavit of Marie C. Siebel subscribed to on 22 Sept. 2010 and the annex thereto ("*Trademark Property Status Report as of Sept 22, 2010*"); and the authenticated Affidavit of Thomas M. Onda subscribed on 22 Sept. 2010 and the annex thereto ("*Men's Guys & Boys and Spring 2010 Catalog*").

On 3 February 2011, Respondent-Applicant filed his verified answer denying all the material allegations in the Opposition and arguing that his mark is not confusingly similar to the Opposer's mark. The Respondent-Applicant submitted as evidence a certified copy of Letters Patent No. D-6098 issued on 05 Sept. 2004 in his favor; photocopies of acknowledgement of filing, trademark application form, recommendation for allowance of application SN 4-2010-500085; photograph of FREEGO jeans using the "POCKET LABEL"

¹ Is a corporation duly organized and existing under and by virtue of the laws of the United States with address at Levis Plaza, 1155 Battery Street, San Francisco, California 9411, U.S.A.

² With address at 1318 Franco Street, Tondo, Manila, Philippines

³ 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. The treaty is called the Nice Agreement concerning the International Classification of goods and services to the purpose of the registration of marks concluded in 1957.

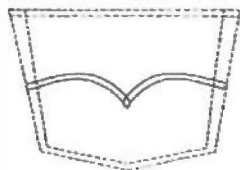
mark; photocopy of the Opposer's jeans using the mark "ARCUATE DESIGN"; and the said party's Affidavit executed on 01 February 2011.

Should the Respondent-Applicant's trademark application be allowed?

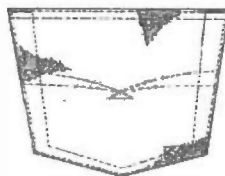
Sec.123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietors or a mark with an earlier filing or priority date, in respect of the same 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 his trademark application on 22 January 2010, the Opposer has existing registrations for the marks "ARCUATE AND DESIGN", "ARCUATE DESIGN", and "ARCUATE/TAB/ two HORSE PATCH Reg. 042324". Like the Opposer's marks, the Respondent-Applicant's mark is used as pocket label for pants, jeans, slacks, shorts and skirts.

The question is: Are the competing marks, as shown below, identical, similar or resemble each other that confusion, mistake, or even deception is likely to occur?



Opposer's mark



Respondent-applicant's mark

The similarity between the marks is that both are basically composed of two sets of pair of lines, one set from the left side and the other from the right, that converge on the middle of the pocket.

However, a closer scrutiny of the competing marks reveals that the configuration of the Respondent-Applicant's lines is different from the Opposer's. First, the lines in the Opposer's marks form high arches, while in the Respondent-Applicant's, the lines are almost horizontal. Secondly, each set of lines in the Opposer's marks is composed of two parallel lines. In the Respondent-Applicant's, the lines are not parallel to one another such that their convergence creates a perspective, suggesting to the eyes a three-dimensional or an illusory vanishing point. Thirdly, the meeting and overlapping of the lines in the Opposer's marks

creates a "diamond-shaped" figure. In the Respondent-Applicant's, underneath the "vanishing point" is an upright obtuse isosceles triangle. These differences have conferred upon the Respondent-Applicant's mark a visual character and appeal that is very distinct from the Opposer's.

Accordingly, this Bureau concludes that the differences between the respective composition and configuration of the competing marks as discussed above, the distinctions being plain and obvious to the eyes, have rendered confusion or deception unlikely to occur.

The essence of trademark registration is to give protection to the owners of trademarks. 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 of his product.⁴ The Respondent-Applicant's mark sufficiently serves this function.

WHEREFORE, premises considered, the instant Opposition is hereby **DISMISSED**. Let the file wrapper of Trademark Application Serial No. 4-2010-500085 be returned together with a copy of this Decision, to the (BOT) Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 06 February 2012.


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

⁴ See *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999..