



CRANE CO.,
Opposer,

-versus-

GEORGE T. ONG,
Respondent –Applicant.

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}
} IPC No. 14-2012-00433
} Opposition to:
} Appln. Serial No. 4-2012-501019
} Date Filed: 24 April 2012
} TM: "KRANE"

NOTICE OF DECISION

HECHANOVA BUGAY & VILCHEZ
Counsel for the Opposer
Ground Floor Chemphil Building
851 Antonio Arnaiz Avenue
Makati City

GEORGE T. ONG
Respondent-Applicant
15 Latukan Street
Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 99 dated April 07, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 07, 2014.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



CRANE CO.,

Opposer,

IPC No. 14-2012-00433

Opposition to Trademark

-versus-

Application No. 4-2012-501019

Date Filed: 24 April 2012

Trademark: "**KRANE**"

GEORGE T. ONG,

Respondent-Applicant.

x ----- x

Decision No. 2014- 99

DECISION

Crane Co.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-501019. The contested application, filed by George T. Ong² (Respondent-Applicant), covers the mark "KRANE" for use on "*brass check valve, ball valve, gate valve, faucet, shower valve*" and "*ppr pipe & fitting*" under Classes 07, 11 and 19, respectively, of the International Classification of Goods³.

Opposer claims to be a diversified manufacturer of highly engineered industrial products with a substantial presence in a number of focused niche markets. According to the Opposer, its history dates back to 1855 with the founding of R.T. Crane Bass & Bell Foundry in Chicago. At present, its company is comprised of five business with facilities located worldwide, to wit: (a) Aerospace and Electronics; (b) Fluid Handling; (c) Engineered Materials; (d) Merchandising Systems; and (e) Controls. In the Philippines, its authorized distributor is Oilfield in Makati City.

The Opposer asserts that the Respondent-Applicant's mark "KRANE" is strikingly similar to its mark "CRANE" as both have only one syllable and consists of the same four letters. While it admits that it is not doing business in the Philippines, it contends that its mark "CRANE" is registered in the Philippines for Classes 07, 09, 11 and 19. Likewise, it asserts that it has valid and existing registrations of the said mark and its variants worldwide.

In support of its Opposition, the Opposer submitted the following as evidence:

¹ A corporation organized and existing under the laws of the State of Delaware, with principal office at 100 Stamford, CT, USA.

² With given address at 15 Latukan Street, Quezon City.

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.

Republic of the Philippines

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1. duly notarized affidavit direct-testimony executed by Atty. Chrissie Ann L. Barredo;
2. copy of Trademark Application No. 4-2012-501019;
3. printouts of Opposer's corporate website;
4. printout of the details of its trademark registration from the Intellectual Property Office (IPOP HL) website;
5. affidavit-testimony of Mr. Augustus I. DuPont;
6. copy of its certificates of registrations obtained from various jurisdictions;
7. samples of its promotional and marketing materials; and,
8. copy of the cover from the December 2005 issue of the Valve World magazine.⁴

This Bureau issued a Notice to Answer dated 12 February 2013 and served a copy thereof upon the Respondent-Applicant. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 24 April 2013 Order No. 2013-649 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether Respondent-Applicant mark "KRANE" should be allowed.

Section 123.1 (d) of the IP Code provides that:

123.1. 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:

- (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

The records reveal that at the time Respondent-Applicant filed for an application of registration of its mark "KRANE" on 24 April 2002, Opposer has an existing and valid registration of its trademark "CRANE" under Registration No. 061015 issued on 22 June 1995.

The contending marks "CRANE" and "KRANE" are unquestionably confusingly similar. They only differ in their first letters but otherwise, they are visually almost identical. Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such

⁴ Marked as Exhibit "B" to "I", inclusive.

resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.⁵ Moreover, they both reverberate the same sound when pronounced. In Filipino, the letter "k" replaces "c" in spelling, thus "Caloocan" is spelled "Kalookan."⁶ Time and again, the courts have taken into account the aural effects of the words and letters in determining the issue of confusing similarity. Thus, in **Marvex Commercial Co., Inc. vs. Petra Hawpia**⁷, the Supreme Court held:

"The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, vol. 1, will reinforce our view that 'SALONPAS' and 'LIONPAS' are confusingly similar in sound: 'Gold Dust' and 'Gold Drop'; 'Jantzen' and 'Jazz-Sea'; 'Silver Flash' and 'Supper-Flash'; 'Cascarete' and 'Celborite'; 'Celluloid' and 'Cellonite'; 'Chartreuse' and 'Charseurs'; 'Cutex' and 'Cuticlean'; 'Hebe' and 'Meje'; 'Kotex' and 'Femetex'; 'Zuso' and 'Hoo Hoo'. Leon Amdur, in his book 'TradeMark Law and Practice', pp. 419-421, cites, as coming within the purview of the idem sonans rule, 'Yusea' and 'U-C-A', 'Steinway Pianos' and 'Steinberg Pianos', and 'Seven-Up' and 'Lemon-Up'. In Co Tiong vs. Director of Patents, this Court unequivocally said that 'Celdura' and 'Cordura' are confusingly similar in sound; this Court held in Sapolin Co. vs. Balmaceda, 67 Phil. 795 that the name 'Lusolin' is an infringement of the trademark 'Sapolin', as the sound of the two names is almost the same."

Furthermore, as in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.⁸ Respondent-Applicant was given an opportunity to defend its case. However, it failed to file its Answer.

Succinctly, since the Respondent-Applicant will use or uses the mark "KRANE" to goods that are similar and/or closely related to that of Opposer's registered mark "CRANE", it is highly probable that the purchasers will be led to believe that Respondent-Applicant's mark is sponsored by, affiliated with or in any way connected with the Opposer. It is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*. "Here

⁵ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁶ Societe des Produits Nestle, S.A. vs. Martin T. Dy, Jr., GR No. 172276, 08 August 2010.

⁷ G.R. No. L-19297, 22 December 1966.

⁸ American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.

though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."⁹

Finally, it is emphasized that 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 as his product.¹⁰ Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend its trademark application but Respondent-Applicant did not bother to do so.

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

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-501019 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 April 2014.


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

⁹ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

¹⁰ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.