GLOBE TELECOM INC., Opposer, **-versus-** **HTC CORPORATION,** Respondent- Applicant.	}	**IPC No. 14-2010-00020** Opposition to: Application No. 4-2009-500351 Date filed: 16 June 2009 **TM: "HTC TATTOO"**

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NOTICE OF DECISION

LAW FIRM OF REYES RARA & ASSOCIATES
Counsel for Opposer
Ground Floor W Tower
39th Street North Bonifacio Triangle
Global City, Taguig

VERALAW
(DEL ROSARIO & RABOCA)
Counsel for Respondent-Applicant
A & V Crystal Tower
105 Esteban Street, Legaspi Village
Makati City

GREETINGS:

Please be informed that Decision No. 2013 - 213 dated October 30, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 30, 2013.

For the Director:

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

GLOBE TELECOM INC.,
Opposer,

- Versus -

HTC CORPORATION,
Respondent-Applicant.
x----------x

IPC No. 14-2010-000020
Opposition to:

Appln. Serial No. 4-2009-500351
(Filing Date: 16 June 2009)
TM: "HTC TATTOO"

Decision No. 2013- 213

DECISION

GLOBE TELECOM, INC. ("Opposer")[1] filed on 20 January 2010 an opposition to Trademark Application Serial No. 4-2009-500351. The application, filed by HTC CORPORATION ("Respondent-Applicant")[2], covers the mark "HTC TATTOO" for use on "*mobile phones; smart phones; personal digital assistants; headsets, headsets with wireless transmission function, connection cables, cradles, batteries, power adaptors, battery chargers, remote controls, keyboards, microphones, loudspeakers, leather pouches for mobile phones, carrying cases for mobile phones, in-car chargers for mobile phones, and in-car holders for mobile phones*" under Class 09 of the International Classification of Goods or Services.[3]

The opposition alleges, among other things, that the mark HTC TATTOO is confusingly similar to the "TATTOO" trademarks subject of earlier trademark applications assigned to the Opposer. According to the Opposer, the registration of the mark HTC TATTOO will violate Sec. 123.(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), and impair the goodwill established over the TATTOO marks.

To support its opposition, the Opposer submitted as evidence, among other things,

1. printouts of the webpages in the website www.ipophil.gov.ph showing details/status of the Opposer's trademark applications under serial numbers 4-2008-014361 and 4-2008-014360 for the mark TATTOO[4];
2. certified true copies of the trademark applications under serial numbers 4-2008-014361 and 4-2008-014360[5] and the deeds assigning them to the Opposer; and
3. advertisement and promotional materials for the mark TATTOO, in various media[6].

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 02 March 2010. In spite of the extensions of the period to file Answer granted to the Respondent-Applicant, the said party failed to file an Answer.

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1 A corporation duly organized and existing under the laws of Philippines with principal office address at Globe Telecom Plaza, Pioneer corner Madison Streets, Mandaluyong City, Philippines.
2 With address at No. 23, Xinghua Road, Taoyuan City, Taoyuan County 330, Taiwan.
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.
4 Marked as Annexes "C" and "D".
5 Marked as Annexes "E" to "J".
6 Marked As Annexes "K" to "LLL".

Should the Respondent-Applicant be allowed to register the mark HTC TATTOO?

It is emphasized that the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure 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[7].

Records show that when the Respondent-Applicant filed its trademark application on 16 June 2009, the Opposer has existing trademark applications in the Philippines for the mark TATTOO and its variation, particularly, serial numbers 4-2008-014360 and 4-2008-014361. These applications cover "*telecommunication services*" under Class 38, and therefore closely related to the goods indicated in the Respondent-Applicant's trademark application. Trademark application serial No. 4-2008-014360 and serial No. 4-2008-014361, originally filed by a certain Eulogio Angala Mendoza, were assigned to the Opposer through deeds of assignment duly recorded in the Bureau of Trademarks on 06 May 2009. This Bureau also noticed that the cited webpages of the website www.ipophil.gov.ph show that the Opposer's trademark applications serial No. 4-2008-014360 and No. 4-2008-014361 ripened into registrations on 31 May 2009 and 17 December 2009, respectively.

In this regard, Sec. 123.1(d) of the IP Code which provides that a mark shall not 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 a mark as to be likely to deceive or cause confusion. This Bureau finds that the competing marks resemble each other such that confusion, or even deception, is likely to occur.

The Respondent-Applicant appropriated the word TATTOO which is the trademark of the Opposer. That the word TATTOO is preceded by the "HTC" in the Respondent-Applicant's mark is of no moment. 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 resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other[8]. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:[9]

> 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, 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

Succinctly, because the Respondent-Applicant will use or uses the mark HTC TATTOO

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7 *Pribhdas J. Mirpuri v. Court of Appeals* G.R. No. 114508, 19 Nov. 1999.
8 *Societe Des Produits Nestle , S.A v. Court of Appeals*, G.R. No.112012, 4 April 2001, 356 SCRA 207, 217.
9 *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.

for goods that are closely related to, and in fact used in conjunction with "*telecommunication services*" which the Opposer is a provider, there is the likelihood that information, assessment, perception or impression, whether good or positive, on the goods sold by the Respondent-Applicant may unfairly be cast upon or attributed to the Opposer. There is the likelihood that the consumers assume that there is a business association between the parties and/or their goods and services, when in fact there is none.

It is very difficult to understand and highly improbable if the circumstance was purely coincidence. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of letters available, the Respondent-Applicant had come up with a mark identical or so nearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.[10]

WHEREFORE, premises considered, the instant opposition is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2009-500351 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City. 30 October 2013.

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

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