



GREENCOIL INDUSTRIES, INC.,
Opposer,

-versus-

GEORGE A. GO,
Respondent- Applicant.

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} IPC No. 14-2013-00215
} Opposition to:
} Appln. Serial No. 4-2012-010122
} Date filed: 17 August 2012
} TM: "GREEN LION"
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}
}

NOTICE OF DECISION

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GEORGE A. GO
Respondent-Applicant
5029 Carreon Street
Ugong, Valenzuela City

GREETINGS:

Please be informed that Decision No. 2013 - 231 dated December 02, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 02, 2013.

For the Director:

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



GREENCOIL INDUSTRIES, INC.,

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IPC No. 14-2013-00215

Opposition to Trademark

Application No. 4-2012-010122

Date Filed: 17 August 2012

Trademark: **"GREEN LION"**

Decision No. 2013- 231

DECISION

Greencoil Industries, Inc.¹ ("Opposer") filed on 17 June 2013 an opposition to Trademark Application Serial No. 4-2012-010122. The contested application, filed by George A. Go² (Respondent-Applicant), covers the mark "GREEN LION" for use on "*household pesticide and rodenticide*" under Class 34 of the International Classification of Goods³.

According to Opposer, it is one of the country's leading manufacturers and distributors of mosquito coils and insecticides since 1995. It states that it was issued the following certificates of registration:

1. Certificate of Registration No. 4-2004-000927 for the trademark "LION WITH THE REPRESENTATION OF A LION" issued on 16 December 2005;
2. Certificate of Registration No. 4-2004-008734 for the mark "RED LION LABEL MARK" issued on 18 September 2006;
3. Certificate of Registration No. 4-2004-000926 for the mark "LION KING WITH A REPRESENTATION OF A LION" issued on 19 April 2009; and,
4. Certificate of Registration No. 4-2004-000924 for the mark "LION-TIGER WITH REPRESENTATION OF A LION/TIGER" issued on 24 February 2005.

Opposer emphasizes that it has not abandoned its registered marks. It contends that Respondent-Applicant's mark "GREEN LION" is a colorable imitation of, almost identical to and/or confusingly similar with its own marks. It avers that the concurrent use and/or registration of Respondent-Applicant's mark will likely cause in mistake, confusion and/or deception among the consuming public, particularly with the choice of the color green which is the

¹ A corporation duly organized and existing under the laws of the Philippines with postal and business address at Pagsabungan Road, Tingub, Mandaue City, Cebu.

² With address at 5029 Carreon Street, Ugong, Valenzuela City, Metro Manila.

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.

first and dominant word of its tradename. It stresses that the contending marks will be used on closely related goods.

In support of its allegations, the Opposer submitted the following:

1. certified machine copy of Opposer's Amended Articles of Incorporation;
2. certified copies of Registration Nos. 4-2004-000927, 4-2004-008734, 4-2004-000926 and 4-2004-000924;
3. certified copies of the Declaration of Actual Use (DAU) filed on 06 February 2004, 28 January 2010, 06 September 2011 and 15 June 2012;
4. certified copies of its representative invoices and photographs of representative products bearing its registered marks;
5. printout of Respondent-Applicant's mark "GREEN LION" as published in the e-Gazette last 22 April 2013; and,
6. duly notarized affidavit of Ramon U. Dacay, President of the Opposer.

On 01 July 2013, a Notice to Answer was served to Respondent-Applicant. The latter, however, failed to comply prompting the Hearing Officer to issue Order No. 2013-1471 on 24 October 2013 declaring him in default and submitting the case for decision.

Essentially, the issue to be resolved is whether Respondent-Applicant's mark "GREEN LION" should be allowed registration.

Records reveal that at the time Respondent-Applicant filed an application for registration of the mark "GREEN LION" on 17 August 2013, Opposer has valid and existing registrations of the marks "LION-TIGER WITH REPRESENTATION OF A LION/TIGER", "LION WITH THE REPRESENTATION OF A LION", "RED LION LABEL MARK" and "LION KING WITH A REPRESENTATION OF A LION" issued respectively on 24 February 2005, 16 December 2005, 18 September 2006 and 19 April 2009. Unquestionably, the Opposer is the prior registrant.

Now, to determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the competing marks are shown hereafter for comparison:



Opposer's marks



Respondent-Applicant's mark

When one looks at the Opposer's mark, what is impressed and retained in the eyes and mind is the figure of lion, either alone or with another figure such as that of a tiger. This is the common denominator among Opposer's family of marks. Upon scrutiny of Respondent-Applicant's mark, the same conclusion may be withdrawn therefrom. While the presentations of the lion are different, this shall not eradicate the probability of confusion and/or deception on the purchasing public. As the Supreme Court held in **Acoje Mining Co., Inc. vs. The Director of Patents**⁴:

⁴ G.R. No. L-28744, 29 April 1971.

"In the language of Justice J. B. L. Reyes, who spoke for the Court in American Wire & Cable Co. v. Director of Patents: 'It is clear from the above-quoted provision that the determinative factor in a contest involving registration of trade mark is not whether the challenging mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. xxx'"

Even the addition of the word "green" is insufficient to lend Respondent-Applicant's mark the distinctiveness required by law. 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 purchased as to cause him to purchase the one supposing it to be the other.⁵ Noteworthy, Opposer's tradename is Greencoil Industries, Inc. Thus, this Bureau cannot close its eyes on the blatant attempt of Respondent-Applicant to ride on the goodwill of Opposer by putting together in one mark the latter's tradename and trademark.

Moreover, the competing marks pertain to closely related goods, i.e. household pesticides. Thus, it is highly probable that the purchasers would be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.⁶

Succinctly, 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 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."⁷

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

⁶ Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

⁷ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

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.⁸ Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend his trademark application but Respondent-Applicant failed 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, which provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion.⁹

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-010122 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 02 December 2013.


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

⁸ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

⁹ Great White Shark Enterprises vs. Danilo M. Caralde, Jr., G.R. No. 192294, 21 November 2012.