



HONG JIN CROWN CORP., LTD.,  
Opposer,

-versus-

ZHEN XING HONG,  
Respondent- Applicant.

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}  
} IPC No. 14-2010-00001  
} Opposition to:  
} Appln. Serial No. 4-2009-000640  
} Date filed: 20 January 2009  
} TM: "HJC INSIDE AN OVAL"

**NOTICE OF DECISION**

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**ZHEN XING HONG**

Respondent-Applicant  
1706 Jose Abad Santos Avenue  
Tondo, Manila

**GREETINGS:**

Please be informed that Decision No. 2013 - 85 dated May 07, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, May 07, 2013.

For the Director:

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



**HONG JIN CROWN CORP., LTD.,**

Opposer,

-versus-

**ZHEN XING HONG,**

Respondent-Applicant.

IPC No. 14-2010-00001

Opposition to Trademark

Application No. 4-2009-000640

Date Filed: 20 January 2009

Trademark: **"HJC INSIDE AN OVAL"**

x ----- x Decision No. 2013- 85

### DECISION

Hong Jin Crown Corporation, Limited<sup>1</sup> ("Opposer") filed on 16 December 2009 an opposition to Trademark Application Serial No. 4-2009-000640. The contested application, filed by Zhen Xing Hong<sup>2</sup> (Respondent-Applicant), covers the mark "HJC INSIDE AN OVAL DEVICE" for use on "helmet" under Class 09 of the International Classification of Goods<sup>3</sup>.

Opposer maintains that the mark "HJC INSIDE AN OVAL" is confusingly similar to its own mark "HJC (Stylized)" such that it would indicate a connection between its own goods and that of Respondent-Applicant's. It claims that it will be damaged and prejudiced as the subject mark is sought to be registered for goods with the same class as that of "HJC (Stylized)". It contends that its own mark has been registered under Certificate of Registration No. 4-1997-116560 issued on 16 April 2004. It furthers that much has already been spent for advertisement and promotion of "HJC (Stylized)" and that the mark has been recognized and well-known in Korea and other countries.

This Bureau issued a Notice to Answer dated 21 January 2010 and served a copy thereof upon the Respondent-Applicant. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 02 August 2012 Order No. 2012-1077 declaring the Respondent-Applicant in default and the case submitted for decision.

<sup>1</sup> A corporation organized and existing under the laws of the Republic of Korea with offices at 54-2, Seo-ri, Ridong-myun Yongin-Kun, Kyung-do, Republic of Korea.

<sup>2</sup> With address at 1706 Jose Abad Santos Avenue, Tondo, Manila.

<sup>3</sup> 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.

The issue to be resolved in this case is whether the trademark application by Respondent-Applicant should be allowed.

The records reveal that at the time Respondent-Applicant filed for an application of registration of its mark "HJC INSIDE AN OVAL", Opposer has a valid and existing registration of its mark "HJC (Stylized)" covered by Certificate of Registration No. 4-1997-116560 issued on 16 April 2004. Unquestionably, Opposer is the prior registrant.

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



*Opposer's Mark*



*Respondent-Applicant's Mark*

When one looks at the Opposer's mark, what is impressed and retained in the eyes and mind are the letters "hjc". This letter combination is the dominant feature of the mark that identifies the product and the source thereof. Upon scrutiny of Respondent-Applicant's mark, the same conclusion may be withdrawn therefrom. There is no doubt that the two marks are identical in spelling and the same sounding when pronounced. Both are also written in blocked letters. That Respondent-Applicant's mark is enclosed in an oval will not lend it the distinctiveness required by law to distinguish its goods from that of Opposer's.

This Bureau also quotes with favor the ruling of the Supreme Court in the case of Del Monte Corporation vs. Court of Appeals<sup>4</sup>, thus:

*"The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."*

<sup>4</sup> G.R. No. L-78325, 25 January 1990.

Noteworthy, both marks pertain to helmets as goods. Respondent-Applicant seeks to register its mark "HJC INSIDE AN OVAL" for "helmet" under Class 09. Opposer's certificate, on the other hand, shows that its mark "HJC (Stylized)" covers "anti-dazzle shades, anti-glare visors, protective helmets, protective gloves, protective masks, solderers helmets, welders helmets, telecommunication apparatus, audio receivers, vehicle radios, signal transmission and receiving apparatus" likewise under Class 09. 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.<sup>5</sup>

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."<sup>6</sup>

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.<sup>7</sup> 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.

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<sup>5</sup> Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

<sup>6</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 8 August 2010.

<sup>7</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

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.<sup>8</sup>

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2009-000640 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 07 May 2013.



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

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<sup>8</sup> Great White Shark Enterprise vs. Caralde , G.R. No. 192294, 21 November 2012.