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JG GROUP OF COMPANIES, INC.,
Opposer,

-versus-

ASPREY TIME, INC.,
Respondent-Applicant.

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}
} IPC No. 14-2013-00280
} Opposition to:
} Appln No. 4-2013-001648
} Date filed: 14 February 2013
} TM: "JUMP"
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}

NOTICE OF DECISION

OFFICE OF BAGAY-VILLAMOR AND FABIOSA

2 Counsel for the Opposer
Unit 107, Oakridge Business Center A
No. 880 A.S. Fortuna Street, Banilad
Mandaue City, Cebu

ASPREY TIME, INC.

1 Respondent-Applicant
431 Shaw Boulevard corner Ideal Street
Mandaluyong City

GREETINGS:

Please be informed that Decision No. 2014 - 172 dated June 30, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 30, 2014.

For the Director:

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



JG GROUP OF COMPANIES, INC.,

IPC NO. 14-2013-00280
Case Filed on: 26 June 2013

Opposer,

Opposition to:
Appln No. 4-2013-001648
Date Filed: 14 February 2013

- versus -

TM: JUMP

ASPREY TIME, INC.,

Respondent-Applicant.

X-----X

DECISION NO. 2014 - 172

DECISION

JG GROUP OF COMPANIES, INC., (opposer)¹ filed an Opposition to ASPREY TIME, INC.'s (respondent-applicant)² Trademark Application No. 4-2013-001648. The application filed by respondent-applicant, covers the mark "JUMP," for goods under Class 14 of the International Classification of Goods³ particularly, "digital watches."

In its Opposition, the opposer alleges, among others, the following: 1.) the mark "JUMP" of respondent-applicant is exactly the same and is confusingly similar with the opposer's "JUMP" marks; 2.) the opposer is the senior applicant for and user of the mark "JUMP"; and 3.) the products subject of the respondent-applicant's mark is part of the normal area for potential expansion for the opposer's "JUMP" marks.

In support thereof, the opposer submitted the following evidence:

1. Copy of the Certificate of Registration No. 4-1999-000407 for trademark "JUMP" issued by the Intellectual Property Office of the Philippines for Class 25. ("Exhibit A")
2. Copy of the Certificate of Registration No. 4-2011-009967 for trademark "JUMP & DEVICE" issued by the Intellectual Property Office of the Philippines for Classes 25 and 18. ("Exhibit B")

¹ A corporation organized and existing under the laws of the Philippines with business address at B10 L9 Muralla Industrial Park, Iba, Meycauayan, Bulacan.

² A corporation organized and existing under the laws of the Philippines with business address at 431 Shaw Blvd. cor. Ideal St. Mandaluyong City.

³ *The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.*

3. Copy of the Certificate of Registration No. 4-2010-009294 for trademark "JUMP AND DEVICE" issued by the Intellectual Property Office of the Philippines for Class 35. ("Exhibit C")
4. Copy of the Certificate of Registration No. 4-2010-009295 for trademark "JUMP SPORTS AND DEVICE" issued by the Intellectual Property Office of the Philippines for Class 35. ("Exhibit D")
5. Copy of the Certificate of Registration No. 4-2011-009966 for trademark "JUMP AND DEVICE" issued by the Intellectual Property Office of the Philippines for Classes 3, 18, and 25. ("Exhibit E")
6. Copy of the Certificate of Registration No. 4-2012-007212 for trademark "JUMP AND DEVICE" issued by the Intellectual Property Office of the Philippines for Classes 3, 18, 25, and 35. ("Exhibit F")

This Bureau issued a Notice to Answer on 9 July 2013 and served a copy to the respondent-applicant on 15 July 2013. However, the respondent-applicant did not file an answer to the Opposition. In view thereof, an Order dated 27 November 2013 was issued declaring the respondent-applicant in default. Consequently, this case was submitted for decision.

The issue to resolve in the present case is whether or not the respondent - applicant should be allowed to register the trademark "JUMP."

This opposition is based on Section 123.1, paragraph (d), of Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines ("IP Code") which provides that a mark cannot 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 mark as to be likely to deceive or cause confusion.

In the instant case, a perusal of the opposing trademarks as depicted below, will show that the marks are essentially the same:

JUMP

jump

Opposer's Trademark

Respondent-Applicant's Trademark

Both parties use the word "JUMP" as their trademark. Except for the difference in the font type as shown above, there is no substantial variance in the appearance of the trademarks. Clearly, the two marks are virtually identical to each other.

The next question to consider is whether the goods subject of the respondent-applicant's trademark are the same or closely related as to possibly cause confusion or deception to the buying public?

This Bureau answers in the affirmative.

The Supreme Court has held that goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores.⁴

Moreover, in resolving whether goods are related, several factors may be considered:

- a.) the business to which the goods belong;
- b.) the class of product to which the goods belong;
- c.) the product's quality, quantity, or size, including the nature of the package wrapper or container;
- d.) the nature and cost of the articles;
- e.) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality;
- f.) the purpose of the goods;
- g.) whether the article is bought for immediate consumption, that is, day-to-day household items.
- h.) The fields of manufacture;
- i.) The conditions under which the article is usually purchased; and
- j.) The channel of trade through which the goods flow, how they are distributed, marketed, displayed and sold.⁵

In the instant case, the respondent-applicant's goods are digital watches while those of the opposer's are composed of clothes, bags, sports wear and clothing accessories. These subject goods are often used with similar purpose in mind, which is, to be worn as body accessories. Moreover, they are also seen and marketed in the same channels of trade – department stores and clothing apparel shops. Therefore, it is highly probable that the public will be confused, if not deceived, on the true source of the goods of the parties.

The function of 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.⁶ Moreover, 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

⁴ *Esso Standard Eastern, Inc. vs. The Honorable Court of Appeals*, G.R. No. L-29971, 31 August 1982

⁵ *Mighty Corporation vs E.J. Gallo Winery*, G.R. No. 154342, 14 July 2004

⁶ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508 19 Nov. 1999

period of time, but also to safeguard the public as consumers against confusion on these goods.⁷

Records show that the opposer, through its predecessor-in-interest, Travel Fox International, Inc., adopted the word mark "JUMP" as early as 1999, while the respondent-applicant, on the other hand, applied for registration of the same only on 14 February 2013. Hence, being the prior registrant of the identical mark, the opposer has a superior right as against the respondent-applicant.

Verily, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design available, the respondent-applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁸ Hence, respondent-applicant's application for registration of the trademark "JUMP" must fail.

WHEREFORE, premises considered, the instant opposition to Trademark Application Serial No. 42013001648 is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 42013001648 be returned together with a copy of this **DECISION** to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 30 June 2014


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

⁷ *McDonald's Corporation v. MacJoy Fastfood Corporation* 215 SCRA 316, 320 (1992); and *Chuanchow Soy & Canning Co. v. Dir. of Patents and Villapania*, 108 Phil. 833, 836 (1960).

⁸ *American Wire & Cable Company vs. Dir. Of Patent*, G.R. No. L-26557, February 18, 1970.