KAI TAK LAO,
Opposer,

-versus-

FREDERICK HUBERT S. CHEOCK, JR.
and JEREMIAH D. PURUGGANAN,
Respondent- Applicant.

IPC No. 14-2013-00013
Opposition to:
Appln. Serial No. 4-2011-002541
Date Filed: 03 August 2011
TM: "STRYDER"

NOTICE OF DECISION

OFFICE OF BAGAY-VILLAMOR & FABIOSA
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Cebu

FREDERICK HUBERT S. CHEOCK, JR.
and JEREMIAH D. PURUGGANAN,
Respondent-Applicants
4 Rosemary Lane
Pasig City, Metro Manila

GREETINGS:

Please be informed that Decision No. 2014 - 161 dated June 23, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 23, 2014.

For the Director:

Atty. JOSEPHINE C. ALON
Bureau of Legal Affairs

KAI TAK LAO,
Opposer,

- versus -

FREDERICK HUBERT S. CHEOCK, JR. and JEREMIAH D. PURUGGANAN,
Respondents-Applicants.

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IPC NO. 14 – 2013- 00013
Case Filed on: 26 February 2013

Opposition to:

Appln Serial No. 42011002541
Date filed: 3 August 2011
TM: "STRYDER"

DECISION NO. 2014 -_161__

DECISION

Kai Tak Lao (Opposer)[1], filed an opposition to Trademark Application No. 4-2011- 002541 on 3 August 2011. The application filed by Frederick Hubert S. Cheock and Jeremiah D. Purugganan, Jr. (Respondents-Applicants)[2], covers the mark "STRYDER" for "*electric cars*" under Class 12 of the International Classification of Goods.[3]

The opposer's based its opposition on the following grounds:

1.) The opposer is the prior user and prior registrant of the "Strider" mark.
2.) The subject mark is confusingly similar to the Mark of the opposer and is being used for similar goods.

To support its opposition, the opposer submitted the following:

1. Exhibit "A" – Trademark Certificate of Registration No. 4-2005-010861 for the "STRIDER" Mark for Class 12 of the International Classification of Goods;
2. Exhibit "B" – Trademark Certificate of Registration No. 4-2005-010860 for the "STORM" Mark for Class 12 of the International Classification of Goods;
3. Exhibit "C" – Trademark Certificate of Registration No. 4-2005-010859 for the "PROSTORM" Mark for Class 12 of the International Classification of Goods;

[1] with business address at 103 V. Gullas Street, Cebu City, Cebu.
[2] Both with address at 4 Rosemary Lane, Pasig City, Metro Manila
[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.

4. Exhibit "D" – Trademark Certificate of Registration No. 4-2005-010858 for the "IMPACT" Mark for Class 12 of the International Classification of Goods;
5. Exhibit "E" – Trademark Certificate of Registration No. 4-2010-001990 for the "CATCHER" Mark for Class 12 of the International Classification of Goods;
6. Exhibit "F" – Trademark Certificate of Registration No. 4-2010-001989 for the "OZONE" Mark for Class 12 of the International Classification of Goods;
7. Exhibit "G" – Trademark Certificate of Registration No. 4-2010-001988 for the "SOFTRO" Mark for Class 12 of the International Classification of Goods;
8. Exhibit "H" – Trademark Certificate of Registration No. 4-2008-014149 for the "RAPIDWIRE" Mark for Class 12 of the International Classification of Goods;
9. Exhibit "I" – Trademark Certificate of Registration No. 4-2009-003023 for the "RAZZO" Mark for Class 12 of the International Classification of Goods;
10. Exhibit "J" – Trademark Certificate of Registration No. 4-2009-003022 for the "GOVERNOR" Mark for Class 12 of the International Classification of Goods;
11. Exhibit "K" – Trademark Certificate of Registration No. 4-2009-003021 for the "CRANT" Mark for Class 9 and 12 of the International Classification of Goods;

This Bureau issued a Notice to Answer on 1 March 2013 and served a copy thereof to the respondents-applicants on 5 March 2013. However, the respondents-applicants did not file an answer to the Opposition. In view of the failure to file an answer, an Order dated 9 September 2013 was issued declaring the respondents-applicants in default. Consequently, this case was deemed submitted for Decision based on the Verified Notice of Opposition and evidence submitted by the opposer.

The issue in the present case is whether to allow the registration of herein respondents-applicants "STRYDER" trademark.

The instant opposition is anchored on Section 123.1, paragraph (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 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.

The opposer argues that the two marks are almost exactly the same. The only difference is the fourth letter wherein the opposer mark has a letter "I" while the repondents-applicants' mark has a letter "Y." The opposer further contends that the difference was negligible as the two word marks were pronounced and sounded exactly the same. This similarity will likely cause confusion and mistake on the part of the purchasing public.

In addition, the opposer further alleged that he is the senior registrant having filed his trademark application as early as 3 November 2005 or almost 7 years earlier than the respondents-applicants. Accordingly, the opposer contends that he has superior right with respect to the said marks. Opposer also alleged that the registration of the "STRYDER" will dilute the distinctive quality of the "STRIDER" mark and will misled the consumers to believe that respondents-applicants' products originated from that of the opposer.

Section 123.1 of Republic Act No. 8293, also known as Intellectual Property Code of the Philippines provides that a mark cannot be register if it:

> x x x
> (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 trademarks subject of the instant case are reproduced below for examination.

STRIDER	STRYDER
Opposer's Trademark	Respondents – Applicants' Trademark

Upon examination of the two competing trademarks and the evidence submitted by the opposer, this office finds merit to the contentions of the opposer.

STRYDER is almost identical to STRIDER visually and aurally. The letter "y" in the respondents-applicants' mark is pronounced as "i" in the opposer's mark. Trademarks with *idem sonans* or similarities as to sound constitute confusing similarity in trademarks.[4]

When the respondents-applicants filed their trademark application on 3 August 2011, the opposer already has an earlier trademark registration for a confusingly similar mark. Furthermore, this Bureau also finds that the two products subject of the competing trademarks, bicycles and cars, are closely related goods as they are both used as transport vehicles. In fact, cars and bicycles can often be seen plying our roads everyday. Thus, it would be very likely that the public may assume that the two products originate from one manufacturer.

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[4] Marvex Commercial Co., Inc. vs. Petra Hawpia and Co, G.R. No. L-19297, 22 December 1966

Time and again, it has been held in our jurisdiction that the law does not require that the competing trademarks must be so identical as to produce actual error or mistake. It would be sufficient, for purposes of the law that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.[5] Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.[6] Because the respondents-applicants will use his mark on goods that are similar and/or closely related to the opposer's, the consumer is likely to assume that the respondents-applicants goods originate from or sponsored by the opposer or believe that there is a connection between them, as in a trademark licensing agreement. 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:[7]

> 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.

Definitely, 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 respondents-applicants 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]

The essence of trademark registration is to give protection to the owners of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the article 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 products.[9] The mark applied for registration by the Respondents-Applicants does not meet this function.

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[5] American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970
[6] Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992
[7] Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987
[8] American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.
[9] Mirpuri vs. Court of Appeals G.R. No. 114508, 19 November 1999

WHEREFORE, premises considered the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-002541 be returned, together with a copy of this Decision, to the Bureau of Trademark for information and appropriate action.

SO ORDERED.

Taguig City, 23 June 2014

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

Copy Furnished:

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