



MARK JOEL N. GO,  
Opposer,

-versus-

CYCLON HELLAS ANONIMI  
VIOMICHANIKI ETAIREIA  
EPEXERGASIAS EMPORIAS  
LIPANTIKON KAI PETRELAIOIDON,  
Respondent –Applicant.

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IPC No. 14-2013-00381  
Opposition to:  
Appln. Serial No. 4-2011-00015056  
Date Filed: 16 December 2011  
TM: "C CYCLON"

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**NOTICE OF DECISION**

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Poblacion, Makati City

**GREETINGS:**

Please be informed that Decision No. 2014 - 82 dated March 25, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 25, 2014.

For the Director:

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



MARK JOEL N. GO,	}	IPC No. 14-2013-00381
Opposer,	}	Opposition to:
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- versus -	}	
	}	Application No. 4-2011-00015056
CYCLON HELLAS ANONIMI	}	Date Filed: 16 December 2011
VIOMICHANIKI ETAIREIA	}	
EPEXERGASIAS EMPORIAS	}	
LIPANTIKON KAI PETRELAIOIDON,	}	Trademark: C CYCLON
Respondent-Applicant.	}	
x-----x	}	Decision No. 2014 - <u>82</u>

## DECISION

MARK JOEL N. GO<sup>1</sup> ("Opposer") filed a Verified Opposition to Trademark Application No. 4-2011-00015056. The contested application, filed on 16 December 2011 by CYCLON HELLAS ANONIMI VIOMICHANIKI ET AIREIA EPEXERGASIAS EMPORIAS LIPANTIKON KAI PETRELAIOIDON<sup>2</sup> ("Respondent-Applicant"), covers the mark C CYCLON for use on "*industrial mineral and grease oil; means of greasing; lubricants, mineral oil; fuel; lightning substances*" under Class 4 of the International Classification of goods.<sup>3</sup>

The Opposer anchors his opposition on Section 123.1, paragraph (d) of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines ("IP Code"). The Opposer alleges that the subject mark is confusingly similar to his CYCLONE and CYCLONE AND DEVICE marks and is being used for similar goods. According to the Opposer, being the prior user in lawful commerce in the Philippines as well as the prior registrant of the CYCLONE and CYCLONE AND DEVICE marks, he has a better and superior right to the said marks.

To support his Opposition, the Opposer alleges the following facts:

"1. The Opposer, since the year 1993, has been engaged in the business of selling LUBRICANTS, OILS, TRANSMISSION FLUIDS AND GREASES, BRAKE FLUIDS, HYDRAULIC OIL, GEAR OIL, FORK OIL (ENGINE OIL), PENETRATING OIL, SEWING MACHINE OIL, ADDITIVES NAMELY NON-CHEMICAL ADDITIVES OIL AND FLUIDS; NON-CHEMICAL ADDITIVES FOR FUELS, LUBRICANTS, AND GREASES; NON-CHEMICAL GASOLINE ADDITIVES AND NON-CHEMICAL MOTOR OIL ADDITIVES bearing the CYCLONE and CYCLONE AND DEVICE marks.

<sup>1</sup> A Filipino citizen, of legal age, with business address at 369-LLL Juana Osmeña Extension, Cebu City, Cebu.

<sup>2</sup> Appears to be a Greek entity, with address at 124 Megaridos Avenue, Aspropyrgos, 19300, Greece.

<sup>3</sup> Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

"2. The Opposer's products bearing the CYCLONE and CYCLONE AND DEVICE marks are sold in various stores nationwide.

"3. Since the year 1993, the Opposer adopted and used the CYCLONE and CYCLONE AND DEVICE marks for his oil products. As early as November 3, 2003, the Opposer filed an application for the registration of CYCLONE as a trademark for Class 4 for the following products: LUBRICANTS, OILS, TRANSMISSION FLUIDS AND GREASES. Registration was granted on March 20, 2005.

A copy of Trademark Certificate of Registration No. PH/4/2003/10042 for the CYCLONE mark in favor of the Opposer is attached herewith as Exhibit "A".

"4. On May 6, 2009, the Opposer filed an application for the registration of CYCLONE AND DEVICE mark as a trademark for Class 4 for the following products: HYDRAULIC OIL, GEAR OIL, FORK OIL (ENGINE OIL), PENETRATING OIL, SEWING MACHINE OIL, ADDITIVES NAMELY NON-CHEMICAL ADDITIVES OIL AND FLUIDS; NON-CHEMICAL ADDITIVES FOR FUELS, LUBRICANTS, AND GREASES; NON-CHEMICAL GASOLINE ADDITIVES AND NON-CHEMICAL MOTOR OIL ADDITIVES. It was subsequently granted registration on October 2, 2009.


A copy of Trademark Certificate of Registration No. PH/4/2009/4415 for the CYCLONE AND DEVICE mark in favor of the Opposer is attached herewith as Exhibit "B".

"5. On May 6, 2009, the Opposer filed an application for the registration of CYCLONE AND DEVICE mark as a trademark for Class 4 for BRAKE FLUIDS. It was subsequently granted registration on October 2, 2009.

A copy of Trademark Certificate of Registration No. PH/4/2009/4414 for the CYCLONE AND DEVICE mark in favor of the Opposer is attached herewith as Exhibit "C".

"6. Since its adoption in the year 1993 and its continued use in commerce up to the present day, the Opposer's CYCLONE and CYCLONE AND DEVICE marks have been developed and has been applied for trademark registration.

"7. The Opposer is filing this Opposition against the registration of the CYCLONE AND DEVICE mark on the ground that it creates confusion of origin, source and business - causing injury and damage on the original trademarks CYCLONE and CYCLONE AND DEVICE marks. The Opposer is entitled to the preservation of the valuable link between him and the public that has been created by its adoption and use of the CYCLONE and CYCLONE AND DEVICE marks in his business and products by restraining the use by the Opposer of the C CYCLON mark. By reason of the Opposer's exclusive, extensive, and uninterrupted use of the CYCLONE and CYCLONE AND DEVICE marks for a number of years, the Opposer has established goodwill and a distinct reputation for his products, and consumers recognize them to belong to the Opposer.



"8. The opposed mark C CYCLON is being applied for INDUSTRIAL MINERAL AND GREASE OIL; MEANS OF GREASING; LUBRICANTS, MINERAL OIL; FUEL; LIGHTNING SUBSTANCES. The Opposer's CYCLONE and CYCLONE AND DEVICE marks are registered for LUBRICANTS, OILS, TRANSMISSION FLUIDS AND GREASES, BRAKE FLUIDS, HYDRAULIC OIL, GEAR OIL, FORK OIL (ENGINE OIL), PENETRATING OIL, SEWING MACHINE OIL, ADDITIVES NAMELY NON-CHEMICAL ADDITIVES OIL AND FLUIDS; NON-CHEMICAL ADDITIVES FOR FUELS, LUBRICANTS, AND GREASES; NON-CHEMICAL GASOLINE ADDITIVES AND NON-CHEMICAL MOTOR OIL ADDITIVES. The Opposer's and the Respondent's products are therefore the same and closely related.

A copy of the Respondent's C CYCLON application is attached herewith as Exhibit "D".

This Bureau issued on 10 October 2013 a Notice to Answer and personally served a copy thereof to Respondent-Applicant's counsel on 23 October 2013. The Respondent-Applicant, however, has not filed its Answer. Accordingly, this Bureau issued Order No. 2014-138 dated 28 January 2014, declaring the Respondent-Applicant in default and submitting the case for decision on the basis of the opposition, affidavit of witness and documentary or object evidence submitted by the Opposer.

Should the Respondent-Applicant be allowed to register the mark C CYCLON?

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>4</sup> Thus, Section 123.1 (d) of R. A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") 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 a mark as to be likely to deceive or cause confusion.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application for the mark C CYCLON on 16 December 2011, the Opposer already has existing registrations for the trademarks CYCLONE and CYCLONE AND DEVICE, to wit:

1. Registration No. 4-2003-010042 for the trademark CYCLONE issued on 20 March 2005, for use on *"lubricants, oils, transmission fluids and greases"* under Class 04;
2. Registration No. 4-2009-004415 for the trademark CYCLONE AND DEVICE issued on 02 October 2009, for use on *"hydraulic oil, gear oil, fork oil (engine oil), penetrating oil, sewing machine oil, additives namely non-chemical additives oils and"*

<sup>4</sup> See *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.

*fluids; non-chemical additives for fuels, lubricants, and greases; non-chemical gasoline additives and non-chemical motor oil additives" under Class 04;*

3. Registration No. 4-2009-004414 for the trademark CYCLONE AND DEVICE issued on 02 October 2009, for use on "brake fluids" under Class 01.

But do the marks, as shown below, resemble each other that confusion or even deception is likely to occur?

**CYCLONE**



Opposer's Marks



Respondent-Applicant's Mark

Notwithstanding the embellishments in the Respondent-Applicant's mark, the competing marks are still visually and aurally the same. The letters comprising the Respondent-Applicant's CYCLON are exactly the same as that of the Opposer's. The addition of the letter "C" preceding the word CYCLON is inconsequential to negate the possibility of confusion since it is the word CYCLON that easily catches the eyes and ears and retains in the memory of the purchasers. As ruled by the Supreme Court, confusion cannot be avoided by merely dropping, adding or changing some of the 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.<sup>5</sup>

Also, when the marks are pronounced, they gave the same sounding effect since both have the same syllables and the word CYCLONE in the Opposer's is usually pronounced with the silent "e" as that of the Respondent-Applicant's CYCLON. Time and again, the court has taken into account the aural effects of the words and letters

<sup>5</sup> *Societe Des Produits Nestle S. A. v. Court of Appeals*, G. R. No. 112012, April 4, 2001.

contained in the marks in determining the issue of confusing similarity.<sup>6</sup> Thus, in *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., et. al.*<sup>7</sup>, the Court held:

The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, *Unfair Competition and Trade Marks*, 1947, Vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jass-Sea"; "Silver Flash" and "Supper Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo". Leon Amdur, in his book "Trade-Mark Law and Practice", pp. 419-421, cites, as coming within the purview of the idem sonans rule, "Yusea" and "U-C-A", "Steinway Pianos" and "Steinberg Pianos", and "Seven-Up" and "Lemon-Up". In *Co Tiong vs. Director of Patents*, this Court unequivocally said that "Celdura" and "Cordura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin", as the sound of the two names is almost the same.

Anent the goods covered by both marks, the Opposer uses CYCLONE and CYCLONE AND DEVICE for "*lubricants, oils, transmission fluids and greases; hydraulic oil, gear oil, fork oil (engine oil), penetrating oil, sewing machine oil, additives namely non-chemical additives oils and fluids; non-chemical additives for fuels, lubricants, and greases; non-chemical gasoline additives and non-chemical motor oil additives; brake fluids*" while the Respondent-Applicant's C CYCLON is for "*industrial mineral and grease oil; means of greasing; lubricants, mineral oil; fuel; lightning substances*". The goods, therefore, are similar or closely related to each other.

Succinctly, because the Opposer's and Respondent-Applicant's marks both deal with similar or related goods, the changes in the spelling therefore did not diminish the likelihood of the occurrence of mistake, confusion or even deception.

It is stressed that the determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark, patent and warrant a denial of an application for registration, 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.<sup>8</sup> The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as

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<sup>6</sup> *Prosource International Inc. v. Horphag Research Management S. A.*, G. R. No. 180073, 25 November 2009.

<sup>7</sup> G. R. No. L-19297, 22 December 1966.

<sup>8</sup> *American Wire and Cable Co. v. Director of Patents et al.*, G.R. No. L-26557, 18 Feb. 1970.

held by the Supreme Court:<sup>9</sup>

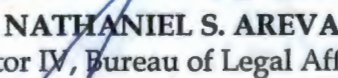
Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality 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.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application No. 4-2011-00015056 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 25 March 2014.

  
Atty. **NATHANIEL S. AREVALO**  
Director IV, Bureau of Legal Affairs

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<sup>9</sup> *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.