



PAKISUYO DELIVERY CENTER by Sole Proprietor Mr. Rosalino Rofule,
Opposer,
-versus-
MARILOU MANGAHAS,
Respondent-Applicant.

}IPC NO. 14-2012-00232
}Opposition to:
}
}Application No. 4-2011-009976
}Date filed :22 August 2011 .
}
}Trademark: PASUYO CENTER
} LOGO AND DESIGN
}
x-----x }Decision No. 2014- 166

DECISION

PAKISUYO DELIVERY CENTER (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2011-009976. The application, filed by MARILOU MANGAHAS (Respondent-Applicant)², covers the mark “PASUYO CENTER LOGO AND DESIGN”, for use on “courier services, delivery” under Class 39 of the International Classification of Goods³.

The Opposer relies on the following grounds in support of its Opposition:

“a. The subject trademark sought to be registered by the Respondent-Applicant is prohibited by Section 123.1 (d) of Republic Act 8293, otherwise known as the Intellectual Property Code (“IP Code”), because it is identical with or confusingly similar to the Opposer’s registered mark used or identical or similar goods and services to wit:

xxx

“b. The subject trademark will enable the Respondent-Applicant to unduly free ride on the goodwill, reputation and popularity of the Opposer’s mark to the latter’s prejudice. In fact, Respondent-Applicant deliberately utilized the subject trademark to pass off her services as those of Opposer. This is a classic example of unfair competition and false designation, description and representation

¹ A single proprietorship duly registered with the Department of Trade and Industry, by its sole proprietor Mr. Rosalino Rofule with address at Gov. Camerino Cor. San Juan St. Dasmarinas, Cavite

² Filipino with address at Dona Zoila Building, National Road, Putatan, Muntinlupa 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.

which is proscribed by the IP Code. Sec. 168 and 169 of the IP Code enunciate:

xxx

According to the Opposer:

- “39. The business of the Opposer initially began as a simple but brilliant idea. The concept of the business was to address the daily chores and errands of the employees who lacked time to attend to such due to the demands of their employment. The said concept was perceived by Ms. Rofule, wife of Opposer. As a working mother, Ms. Rofule saw the difficulty in handling her household chores like paying the family utilities such as water, electricity and rent, buying groceries, doing the laundry, running errands for her children while at the same time going to work. Thus, she thought of the brilliant idea to put up a business intended to run errands for others.
- “40. Sometime in 1997, Opposer and Ms. Rofule conceptualized their business idea. In 2003, as a product of family brainstorming, Opposer and Ms. Rofule named their business as ‘Pakisuyo Delivery Center.’ The said name was registered with the Department of Trade and Industry in the same year in the name of Ms. Rofule. In 2007, the business was transferred in the name of the Opposer.
- “41. Their first business site is at Camerino cor. San Juan Sts. Dasmariñas, Cavite. Ms. Rofule, who exercised joint control in the operations of the business with the Opposer, took an early retirement from her profitable employment just to devote her full attention, focus and time to the business. The savings of the Opposer earned when he was still a Cinema Booker together with the retirement money of Ms. Rofule were used in their direct efforts to run a fully operational business. These sacrifices made by both the Opposer and Ms. Rofule paid off proved by the continued profitability of the business.
- “42. Like any other business, the Opposer and Ms. Rofule were confronted with many struggles before the business evolved to the successful and known business that it is at the present. The most challenging among those struggles was making the business known to the public. The Opposer and Ms. Rofule confronted and successfully resolved this struggle by coming up with massive and effective marketing strategies.
- “43. As part of their marketing strategy, the Opposer and Ms. Rofule first invested heavily on the distribution of pamphlets within the

locality of their business. They ventured in massive distribution of their pamphlets to advertise unique services that they are offering. This strategy proved to be effective because it gained them numerous clients. Moreover, it caught the attention of the media.

- “44. The Opposer also had the opportunity of advertising the business in nationwide television and radio broadcast in three channels. First, the Opposer and Ms, Rofule were invited to guest in two (2) programs aired by NBN PTV Channel 4, to wit: *Negosyo at iba pa* aired on 7 November 2011. Second, the Opposer was also able to advertise in the program, *Sikapinoy* of ABS CBN Teleradyo, DZMM. Finally, DZRA, Sunshine network station also featured the Opposer in the program *Biyahe at Gimik* on 28 and 29 October 2011.
- “45. The Opposer also exhausted the fast emerging popularity of internet in the field of advertising. Thus, it developed its official website www.pakisuyo.com where it can advertise its services and at the same time transact business with its clients. Advertising through the internet proved to be most effective because it reached potential clients both local and abroad. The Opposer then managed to advertise through other commercial websites as well such as www.ofwbusdak.com, www.filipino.ca, www.kabeetmaps.com, www.pakisuyocenter.multiply.com, www.surepass.ph and www.sulit.com. It must be noted that internet advertising undertaken were not for free. The Opposer financially invested in these advertisements so as to establish the goodwill of the business and make it well-known to the public.
- “46. Moreover, even newsprint advertising was exhausted by the Opposer in its efforts to effectively establish the goodwill of the business and to make it known to the public. The Opposer was able to list its business in the 7 September 2007 issue of *Buy & Sell* and in September 2007 issue of *Life and Ads*, a local paper circulated in the City of Dasmariñas.
- “47. Sometime in 2011, a potential client and acquaintance of Ms. Rofule approached her and inquired whether or not the Opposer also owns a similar business operating using the name ‘Pasuyo Center’ located somewhere in Muntinlupa City. She answered in the negative. The former then admitted that she thought that the Opposer’s business and the Pasuyo Center were one and the same because both were engaged in the same business. Moreover the same color scheme were used in the business site and uniforms of the employees. She even thought that the names were actually identical due to similar letters and phonetics used. Thinking that the report of a third party was purely incidental and merely an

isolated case, the Opposer did not make a huge deal out of the incident.

“49. However, sometime in September 2011, the business of the Respondent-Applicant was again mistakenly identified as that of the Opposer. During this particular instance, Sandra Guia Briam (‘Ms. Briam’), one of the Opposer’s staff, while wearing one of the Opposer’s company uniform, was at SM Manila. While inside the ladies room at the mall, a stranger approached her and asked if she was affiliated with an errand business located at Muntinlupa City, apparently pertaining again to Pasuyo Center.

“50. The two (2) instances alarmed the Opposer. The Opposer suspected that someone might be copying their business style and worse, even be using their business name. Thus, the Opposer conducted an internet search of the said similar business operating somewhere in Muntinlupa City. Much to the Opposer’s surprise, they found out that indeed, there was a business by the name of Pasuyo Center located in Muntinlupa City. The said business offered the same services that the Opposer was offering, to wit running errands for others, specifically securing certificates and processing registration from and at the National Statistics Office (‘NSO’) which at the time is the most profitable service offered by the Opposer.xxx”

The Opposer submitted as evidence the following:

1. Certified true copy of Certificate of Registration issued by the Department of Trade and Industry (“DTI”) for PAKISUYO DELIVERY CENTER;
2. Certified true copy of Certificate of Registration No. 4-2011-005451 for the mark “PAKISUYO CENTER ANG UTUSAN NG BAYAN! And Device”;
3. Affidavit of Rosalino Rofule dated 8 June 2012;
4. Affidavit of Maria fe Cantillo-Rofule dated 8 June 2012;
5. Certification and Certificate of Registration from the DTI dated 21 May 2012;
6. Copies of pamphlets distributed by Opposer;
7. CDs containing recorded program of Opposer’s guesting *Negosyo atbp, Sikapinoy, Biyahe at Gimik*;
8. Letter of invitation form DZMM dated 24 June 2010;
9. Print-out of webpages of advertising of the Opposer namely:
www.pakisuyo.com, www.ofwbusdak.com, www.filipino.ca,
www.kabeetmaps.com, www.pakisuyocenter.multiply.com, www.surepass.ph,
www.sulit.com. ;
10. Listings in *Buy & Sell* and *Life and Ads* in September 2007;
11. Affidavit of Sandra Guia Bram dated 8 June 2012;
12. Affidavit of Maynard Cuason dated 8 June 2012;
13. Pictures of façade of Respondent-Applicant’s business in Muntinlupa City;
and

14. Receipt for NSO services.⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 15 June 2012. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 14 February 2013 Order No. 2013-256 declaring the Respondent-Applicant in default.

Should the Respondent-Applicant be allowed to register the trademark PASUYO CENTER LOGO & DESIGN?

Sec. 123.1. Registrability. A mark cannot be registered if it:

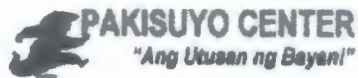
- (d) is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
 - (i) the same goods or services; or
 - (ii) closely related goods or services; or
 - (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion.

The records show that when the Respondent-Applicant filed her application on 22 August 2011, the Opposer already filed an application on 12 May 2011 and obtained the registration for the trademark PAKISUYO CENTER AND Utusan ng Bayan & Device⁵ on 20 October 2011 covering goods/services under Classes 39 namely, "courier service, freight forwarding, freight brokerage, logistics namely transport, delivery and storage of goods"; and Class 45, namely "personal concierge services for others comprising making requested personal arrangements and reservations, running errands and providing customer specific information to meet individual needs, all rendered in business establishments, office buildings, hotels, residential complexes, and homes, errand services". The Respondent-Applicant's trademark application therefore indicates services that are similar and/or closely related to those covered by the Opposer's trademark registration. The Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer's, particularly, courier and delivery services, which is in the same field of business and trade.

But are the competing marks, depicted below resemble each other such that confusion, even deception, is likely to occur?

The competing marks, depicted below, are confusingly similar:

⁴ Exhibits "A" to "W" with submarkings.
⁵ Exhibit "B"



Opposer's mark



Respondent-Applicant's mark

The Respondent-Applicant's mark "PASUYO CENTER LOGO & DEVICE", appropriates the word PAKISUYO, a dominant component of the Opposer's mark "PAKISUYO CENTER AND UTUSAN NG BAYAN & DEVICE" The root word of the words "PAKISUYO" and "PASUYO" is the word "SUYO" which connotes or means "asking or courting a favor", "please" or "request". "SUYO" means ingratiating or trying to win favor of someone.⁶ "PAKISUYO" and "PASUYO" are the verb forms of the word "SUYO". Even if the Respondent-Applicant removed the syllable "KI", this negligible difference does not change the fact that both words sound the same and have the same etymology and connotation. When pronounced, PAKISUYO" and "PASUYO", sound phonetically similar. Moreover, the competing marks are depicted in block style of lettering and the presentation employs the dominant colors, red and yellow. Both marks depict a running man wearing a hat. The Opposer's mark features a running man wearing a "salakot", while the Respondent-Applicant's is described as a man walking in a wide stride. However, both are representations of a running/walking man, having the same motion/angle, running stance, position of arms and legs, one is wearing a cap, the other, a "salakot". One is an unmistakable copycat of the other. Visually and aurally, the competing marks are confusingly similar.

Succinctly, because the Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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.⁷

⁶ tagalog.pinoydictionary.com/word/suyo/

⁷ *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

The public interest, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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

The records show that the Opposer painstakingly promoted and advertised its business in print and broadcast media.⁹ The records show that the Opposer was able to develop a novel idea of doing business using its PAKISUYO CENTER mark and has attained considerable success. The Respondent-Applicant despite the opportunity given, did not file an Answer to defend its trademark application and to explain how it arrived at using the mark PASUYO CENTER LOGO & DEVICE which is confusingly similar to that of the Opposer. Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs 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.¹⁰

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2011-009976 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 23 June 2014.


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

⁸ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

⁹ Exhibits "G" to "Q", inclusive of submarkings

¹⁰ *American Wire & Cable Company v. Director of Patents*, G. R. No. L-26557, 18 February 1970.