



RECTO YONGCO,
Opposer,

-versus-

MA. OLIVIA D. TAN,
Respondent-Applicant.

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}
} IPC No. 14-2009-00118
} Opposition to:
} Appln. Serial No. 4-2008-004625
} Filing Date: 21 April 2008
} TM: "TM FLEXMASTER"
}
}
}

NOTICE OF DECISION

SAPALO VELEZ BUNDANG & BULILAN
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Manila

GREETINGS:

Please be informed that Decision No. 2012 - 147 dated August 13, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 13, 2012.

For the Director:

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

CERTIFIED TRUE COPY

Marilyn F. Retutal
MARILYN F. RETUTAL



RECTO YONGCO,
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- versus -

MA. OLIVIA D. TAN,
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IPC No. 14-2009-00118
Opposition to:

Appln. Serial No. 4-2008-004625
(Filing Date: 21 April 2008)

Trademark: **TM FLEXMASTER**
Decision No. 2012 - 147

DECISION

RECTO YONGCO¹ ("Opposer") filed on 20 April 2009 an opposition to Trademark Application Serial No. 4-2008-004625. The application, filed by MA. OLIVIA D. TAN² ("Respondent-Applicant"), covers the mark TM FLEXMASTER for use on "*carpets, rugs, mats and matting, linoleum for covering existing floors*" under Class 27 of the International Classification of goods³.

The Opposer alleges that he is the first to adopt, use and register in the Philippines the TM FLEXMASTER mark for linoleum, mats, rags and carpets and therefore, enjoys under Sec. 147 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), the right to exclude others from registering or using identical or confusingly similar marks such as the Respondent-Applicant's for goods under class 27. According to the Opposer, because there is a likelihood of confusion between his mark and the Respondent-Applicant's, TM FLEXMASTER cannot be registered in the Philippines in favor of the Respondent-Applicant in view of Sec. 123 (e) of the IP Code. The confusion, or mistake, or deception is with respect to affiliation, connection, or association with the Opposer, or as to origin, sponsorship, or approval of goods and services by the Opposer, for which the Respondent-Applicant is liable for false designation of origin, false description or representation under Sec. 169 of the IP Code. The Opposer also avers:

"1. Opposer is the first to adopt, use and register the TM FLEXMASTER trademark.

Opposer is the first to adopt, use and register the TM FLEXMASTER trademark in the Philippines for linoleum, mats, rags and carpets. In 1980, the Opposer's uncle Mr. Samson Siy, opened a factory which manufactured pushcarts, folding beds, ironing boards and baby's items such as - walkers, playpens, high chairs and baby trainers. Subsequently, Mr. Siy opened a store in Ilaya Street, Binondo, Manila and started selling imported linoleum along with his other products.

In 2002, Mr. Siy, along with the Opposer and several others, re-organized and decided to incorporate SRV CANEA CORPORATION, a company duly registered with

¹ With business address at Rm. 1004 Moraga Mansion Plaza, Moraga, Binondo, Manila.

² With address on record at 35 Sandiko St., BF Homes, Brgy. Holy Spirit, Capitol Hills, Quezon City, Metro Manila.

³ The 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.

the Securities and Exchange Commission primarily engaged in the business of trading particularly in the sale of PVC sheeting such as floor matting (linoleum), table cloth and shower curtains, etc. Opposer herein is one of the major shareholder and treasurer of the said corporation.

In March of 2006, the Opposer started importing his linoleum products from factories in Thailand and started using the TM FLEXMASTER mark. It was through SRV Canea Corporation that the Opposer marketed and traded his TM FLEXMASTER linoleum products. Sales invoices of SRV Canea Corporation for the sale of the TM FLEXMASTER linoleum products are attached hereto and made integral parts hereof as Exhibits 'A' - 'A-17'.

To secure a firm and solid grip over the mark TM FLEXMASTER, the Opposer initially filed for the registration of the TM FLEXMASTER mark with the Intellectual Property Office (IPO) under Application No. 4-2006-006955 on June 28, 2006. A request for revival for the said trademark application was subsequently filed on September 3, 2008. Copies of the trademark application form and request for revival are attached hereto and made integral parts hereof as Exhibits 'B' and 'B-1', respectively.

The Affidavit of Ms. Emilie Young, the General Manager of SRV Canea Corporation, attesting to the registration, used and popularity of the Opposer's mark is attached hereto and made an integral part hereof as Exhibit 'C'.

"2. Respondent-Applicant's trademark TM FLEXMASTER mark is confusingly similar with Opposer's TM FLEXMASTER trademark.

Respondent-Applicant's trademark TM FLEXMASTER is confusingly similar to Opposer's TM FLEXMASTER trademark in sound, spelling, appearance and meaning as to likely cause confusion.

The contending marks are exactly identical in sound, spelling, meaning and appearance since Respondent-Applicant entirely reproduced and adopted Opposer's TM FLEXMASTER trademark in its TM FLEXMASTER trademark. Confusion is even made more certain since the subject marks are used for identical goods under class 27.

The Opposer's mark, and the Respondent-Applicant's mark are reproduced below to show the confusing similarity between the contending marks:

TM
FLEXMASTER

Opposer's Mark

TM
FLEXMASTER

Respondent-Applicant's Mark

A sample of Opposer's mark as used in his advertising/ promotions is attached hereto and made an integral part hereof as Exhibit 'D'.

"3. The use of Respondent-Applicant's trademark TM FLEXMASTER mark would indicate a connection with the goods covered in Opposer's TM FLEXMASTER mark, hence, the interests of the Opposer are likely to be damaged.

Respondent-Applicant's products are clearly identical to Opposer's products covered by his TM FLEXMASTER trademark. Undoubtedly, the use of Respondent-Applicant's trademark TM FLEXMASTER definitely misleads the public into believing

that its goods originate from, or are licensed or sponsored by Opposer or that Respondent-Applicant is associated with or an affiliate of the Opposer.

Respondent-Applicant has appropriated the trademark TM FLEXMASTER for the obvious purpose of capitalizing upon or riding on the valuable goodwill and popularity of the TM FLEXMASTER trademark, which Opposer gained through tremendous effort and expense over a long period of time. This clearly constitutes an invasion of Opposer's intellectual property rights.

The use by Respondent-Applicant of TM FLEXMASTER will dilute the distinctiveness of Opposer's TM FLEXMASTER trademark.

The use, sale and distribution by the Respondent-Applicant of goods bearing the TM FLEXMASTER trademark are inflicting considerable damage to the interests of the Opposer. To allow Respondent-Applicant to register TM FLEXMASTER will constitute a mockery of our laws protecting intellectual property rights; it will legitimize its unfair and unlawful business practice."

The Respondent-Applicant, in her Verified Answer, dated 23 July 2009, denied all the material allegations in the notice of opposition and raised the following special and affirmative defenses, to wit:

"3.02 Opposer has neither legal nor factual basis for his claim that he will be damaged by the approval of the application or registration of the mark TM FLEXMASTER bearing Application Serial No. 42008004625 filed on 21 April 2008;

"3.03 The trademark TM FLEXMASTER was adopted and has been continuously used by Respondent-Applicant in good faith and in accordance with law. The examination and approval for publication of Application Serial No. 420084625 was done pursuant to, and in accordance with the provisions of R.A. 8293, otherwise known as the Intellectual Property Code of the Philippines. Corollary to the approval for publication of the subject mark, Respondent received a Notice of Allowance (**Exhibit 'A'**) with a stamped mailing date on 24 November 2008;

"3.04 Respondent-Applicant was not aware of Opposer's alleged mark TM FLEXMASTER. Respondent-Applicant came to know of it only upon receipt of Opposer's Notice of Opposition filed on 20 April 2009;

"3.05 Respondent-Applicant is the owner and prior user of the mark TM FLEXMASTER. In fact, Respondent-Applicant has several registrations with the word/flex or flexmaster as one of the components of or is incorporated in either trademark/s or tradenames of Respondent. The details of the registrations and/or applications (**Exhibits 'B' to 'B-3'**, Respondent) are as follows:

Trademark	Registration Number	Nice Classification	Application Date	Application Number
PGFLEX (STYLIZED)	4-2005-010634	18, 27, 22, 16, 24 and 25	26 October 2005	
RGFLEXMASTER	4-2008-004626	27	21 April 2008	
RGFLEX	4-2008-006422	27	2 June 2008	
EUROFLEX		27	15 June 2009	4-2009-005846

TM FLEXMASTER		27	21 April 2006	4-2068-004625
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"3.06 That in the year 2003-2004, Respondent started doing business using the trade or business name – NEO ADVANCE GENERAL SALES with its place of business at Quezon City. Evidence to show or prove use of the subject mark in Respondent's earlier business operation in connection to selling linoleum with its 'TM Flex' brand are the following sales invoices attached hereto as follows:

Exhibit	Document
'C'	Sales Invoice No. 301
'C-1'	Sales Invoice No. 302
'C-2'	Sales Invoice No. 306
'C-3'	Sales Invoice No. 307
'C-4'	Sales Invoice No. 310
'C-5'	Sales Invoice No. 311
'C-6'	Sales Invoice No. 312
'C-7'	Sales Invoice No. 313
'C-8'	Sales Invoice No. 315
'C-9'	Sales Invoice No. 317
'C-10'	Sales Invoice No. 320
'C-11'	Sales Invoice No. 321
'C-12'	Sales Invoice No. 323
'C-13'	Sales Invoice No. 324
'C-14'	Sales Invoice No. 327
'C-15'	Sales Invoice No. 328
'C-16'	Sales Invoice No. 330
'C-17'	Sales Invoice No. 332
'C-18'	Sales Invoice No. 333
'C-19'	Sales Invoice No. 337
'C-20'	Sales Invoice No. 338
'C-21'	Sales Invoice No. 339
'C-22'	Sales Invoice No. 342
'C-23'	Sales Invoice No. 344
'C-24'	Sales Invoice No. 345
'C-25'	Sales Invoice No. 347
'C-26'	Sales Invoice No. 350
'D'	Sales Invoice No. 105
'D-1'	Sales Invoice No. 112
'D-2'	Sales Invoice No. 114
'D-3'	Sales Invoice No. 115
'D-4'	Sales Invoice No. 116

'D-5	Sales Invoice No. 134
'D-6'	Sales Invoice No. 135
'E'	Sales Invoice No. 152
'E-1'	Sales Invoice No. 157
'E-2'	Sales Invoice No. 158
'E-3'	Sales Invoice No. 159
'E-4'	Sales Invoice No. 162
'E-5'	Sales Invoice No. 178
'E-6'	Sales Invoice No. 183

"3.07 Respondent-Applicant's business ventures are popular and widely known in the retail business as producer of quality linoleums which dates back a long time or since the year 1997;

"3.08 Respondent together with its business partners – Premium Plastic Group Mfg. Corporation undertook to promote its linoleum business through extensive advertisement, marketing promotional activities nationwide, and as such spending considerable amounts especially for engagement of a celebrity endorser –Cesar Montano (**Exhibit 'F'**, Respondent) as its products endorser, this includes sponsorship in TV shows and games, in print media and various promotional events such as billboards both in NLEX and SLEX, and in several location in Metro Manila like – Divisoria, Port Area, Monumento. File photos of the NLEX and SLEX billboards are attached hereto and marked as **Exhibits 'G', 'G-1', 'G-2', 'G-3', 'G-4', 'G-5' and 'G-6'**;

"3.09 Respondent's products together with her business partners in the linoleum business industry have earned for Respondent-Applicant valuable goodwill and reputation and known as producer of famous and quality linoleums;

"3.10 On 28 June 2006, Opposer applied for registration of the mark TM FLEXMASTER for goods under Class 27. However, the Bureau of Trademarks of IPO issued and mailed to Opposer a Notice of Abandonment (**Exhibit 'B-1'**, Opposer) which stated that Opposer's application for TM FLEXMASTER was considered abandoned as of January 6, 2008;

"3.11 The period given for Opposer to revive his abandoned application was three (3) months from the date when IPO considers one's application abandoned, which in this case, was on January 6, 2008. When Opposer filed a petition or request to revive his abandoned application, it was beyond the period prescribed to revive, the request letter having been filed on 03 September 2008, eight (8) months after it was considered abandoned;

"3.12 Given these circumstances and events, it has affected Opposer's rights to a trademark. Such inaction on the part of Opposer during the period to revive his abandoned application may be presumed as a neglect already amounting to final abandonment; x x x A letter address to Director of Trademarks – Atty. Leny B. Raz, dated February 25, 2009 is attached hereto for ready reference and marked as **Exhibit 'H'**;

"3.13 Respondent owns the mark TM FLEXMASTER, having acquired it through prior and continued use. If Opposer's use of his mark TM FLEXMASTER can be traced, the earliest noted or the alleged date of first use was in 2006 (**Exhibits 'A' to 'A-17'**,

Opposer), doing business under the name of SRV Canea Corporation. However, Opposer should have established his connection or at the most his indirect relation with SRV Canea Corporation, e.g. attaching a certified true copy of the Articles of Incorporation and By-Laws of SRV Canea Corporation for that matter, unfortunately, as happened in this case, Opposer failed to attach said Articles and By-Laws or miserably failed to prove the relation/s in the evidence submitted, hence, the alleged commercial and actual use of TM FLEXMASTER of SRV Canea Corporation will not redound to the benefit of Opposer, thus, he can not rely on the invoices submitted (Exhibits 'A' to 'A-17', Opposer) to show or prove actual use;

"3.14 Moreover, the attached (Exhibit 'C' Opposer) does not prove use of TM FLEXMASTER in Opposer's favor, as indicated – it's 'TM FLEXMASTER by Golden Sun'. Again, the association, if any, of Opposer to Golden Sun, was not established by any acceptable proof. By and large, there was no use proven in Opposer's favor contrary to his allegation that he first adopted and used the subject mark. Adhering to the rule on prior adoption and use, the principles enunciated in the case of *Pagasa Industrial Corporation v. Court of Appeals (G.R. No. L-54158, 19 November 1982)* finds application in the instant case, thus: x x x;

"3.15 Respondent having first adopted and used the subject mark and eventually duly allowed by the Intellectual Property Office to be registrant of the subject mark, there is no denying that it is the Respondent, and not the Opposer, who emerges as the prior user having used and adopted the word mark TM FLEXMASTER since 2003;

"3.16 On the other hand, assuming that Opposer invokes his right under the 'first to file' rule of R.A. 8293 despite his abandoned application, and even granting without necessarily admitting that Opposer should have exclusive rights over the TM FLEXMASTER mark concomitant to his being the first filer of similar mark TM FLEXMASTER, nonetheless, Respondent-Applicant being the prior adopter and user of the mark TM FLEXMASTER will still enjoy superior rights over the word mark TM FLEXMASTER pursuant to Sections 131.3 and 159.1 of R.A. 8293.

x x x

With the afore-quoted provisions, the prior user is accorded rights superior to that of a trademark first filer and registrant under R. A. 8293. If a prior user enjoys protection from a prior trademark registrant under Sections 131.3 and 159.1 of R. A. 8293, what more is expected from a prior user who invokes his rights as against an Opposer with abandoned application, like what clearly happened in this instant case;

"3.17 Likewise, the so-called 'First-to-File' rule of the trademarks law is not an absolute rule. The Honorable Director General of the IPO in an appealed IP case, Appeal No. 14-06-26, rendered a decision with a pronouncement that the so-called 'first to file' rule was not intended to favor the first applicant simply because it filed the first application, the Director went further to state that:

x x x

"3.18 Respondent-Applicant and its business partners conceptualized the subject mark TM FLEXMASTER derived from its popular PGFLEX trademark, and together the so called sub-brands – RGFLEX, RGFLEXMASTER, EUROFLEX to show that Respondent-Applicant and its business group/partner has an array of trademarks with the "flex" word as key component. Shown hereunder are the various trademarks of Respondent with the "flex" word integrated in its list of registered trademark/s and pending application with IPO.



RG Flexmaster

TM

EUROFLEX

FLEXMASTER

"3.19 For Opposer's part, a factual basis is wanting to substantiate his claim of ownership over the mark, TM FLEXMASTER, as applied to goods under Class 27, to explain to this forum how he coined or conceptualized this trademark when there exists in the market a prior and substantially similar registered trademarks PG FLEX, RG FLEX, RG FLEXMASTER, EUROFLEX and TM FLEXMASTER;

"3.20 Needless to state, Opposer applied for other marks copying other known trademarks, to wit:

x x x

"3.21 In the affidavits executed by Neo Advance Gen. Sales registered proprietor – Ms. Elaine Manzana, and Corporate Secretary of Premium Plastic Group Mfg. Corp. - Ms. Jeanette Sy, attached hereto as Exhibits 'P' and 'I-1', explained Respondent-Applicant joint ventures and business tie-ups, and her association with the following registered trademarks or other marks pending applications, respectively: PG FLEX, RG FLEX, RG FLEXMASTER, TM FLEXMASTER and EUROFLEX;

"3.22 Clearly, having established prior use, adoption and true ownership of the mark TM FLEXMASTER as against Opposer, the instant opposition should be dismissed as it lacks factual and legal basis. Actual samples of Respondent-Applicant's TM FLEXMASTER's linoleum are attached hereto and marked as Exhibits 'J' and 'J-10'."

The preliminary conference was terminated on 27 October 2009. Then after, the Opposer submitted his position paper on 14 January 2010 while the Respondent-Applicant did so the next day.

After a judicious evaluation of the records and the parties' respective evidence and arguments, this Bureau finds the opposition without merit.

The Opposer anchors his opposition on Sections 123.1 (e) and 147 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). The rights under Sec. 147, however, may be exercised only by the owner of a registered mark. The records and evidence show that he has no registration yet for the mark TM FLEXMASTER when he filed the instant opposition case on 20 April 2009. In fact, the Opposer himself admitted or alleged that his trademark application filed in 2006 was declared abandoned, and that he has filed a

Request for Revival only on 02 September 2008. He even submitted, to form part of his evidence and of the records, a copy of his Request for Revival.

Sec. 123.1(e) of the IP Code meanwhile pertains only to well-known marks. There is no evidence submitted that the mark TM FLEXMASTER is a well-known mark based on the criteria set forth in Rule 102 of the Trademark Regulations.

This Bureau also finds untenable the Opposer's argument set forth in his position paper that the Respondent-Applicant's trademark application violates Sec. 123.1(d) of the IP Code. The Opposer's application has been declared abandoned in January 2008. Thus, when the Respondent-Applicant filed her trademark application on 10 April 2008, there is no trademark application in the Opposer's name to speak of. Again, the Opposer himself alleges that he filed his Request for Revival of his abandoned trademark application only on 02 September 2008. And as pointed out by the Respondent-Applicant, the Request for Revival was filed beyond the three (3)-month reglamentary period under Rule 615 of the Trademark Regulations. While the Opposer's trademark application was deemed abandoned as of 06 January 2008, the said party filed the Request for Revival only after the lapse of almost eight (8) months.

Even assuming *in arguendo* that the Opposer's application is revived, this will not improve the said party's standing in the instant case. It is emphasized that it is not the application or the registration that confers ownership of a mark, but it is ownership of the mark that confers the right to registration. The Philippines implemented the World Trade Organization "TRIPS Agreement" when the IP Code took into force and effect on 01 January 1998.⁴ Art. 16 (1) of the TRIPS Agreement states:

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, not shall they affect the possibility of Members making rights available on the basis of use.

Significantly, Sec. 121.1 of the IP Code adopted the definition of the mark under the old Law on Trademarks (Rep. Act No. 166), to wit:

121.1. "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, R.A. No. 166a)

Sec. 122 of the IP Code also states:

Sec.122. How Marks are Acquired.- The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R. A. No. 166a)

There is nothing in Sec. 122 which says that registration confers ownership of the mark. What the provision speaks of is that the rights in a mark shall be acquired through registration, which must be made validly in accordance with the provisions of the law.

⁴ See Sec. 2: Trademarks, Art. 15 (Protectable Subject Matter).

Corollarily, Sec. 138 of the IP Code provides:

Sec. 138. Certificates of Registration. - A certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Emphasis supplied)

While the country's legal regime on trademarks shifted to a registration system, it is not the intention of the legislators not to recognize the preservation of existing rights of trademark owners at the time the IP Code took into effect.⁵ The registration system is not to be used in committing or perpetrating an unjust and unfair claim. A trademark is an industrial property and the owner thereof has property rights over it. The privilege of being issued a registration for its exclusive use, therefore, should be based on the concept of ownership. The IP Code implements the TRIPS Agreement and therefore, the idea of "registered owner" does not mean that ownership is established by mere registration but that registration establishes merely a presumptive right of ownership. That presumption of ownership yields to superior evidence of actual and real ownership of the trademark and to the TRIPS Agreement requirement that no existing prior rights shall be prejudiced. In *Berris v. Norvy Abyadang*⁶, the Supreme Court held:

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122 of R.A. No. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. R.A. No. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register. In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused. Moreover, the presumption may likewise be defeated by evidence of prior use by another person, i.e., it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce. (Emphasis supplied)

The Opposer's claim that he is the first one to adopt and use the contested mark in the Philippines is not supported by the record and evidence. In his opposition, the Opposer claims that he started importing linoleum products from Thailand using the TM FLEXMASTER mark in March 2006. He also presented sales invoices issued by a certain "SRV Canea Corporation" showing sale of products supposedly bearing the contested mark, the earliest of which was also in 2006.

However, the Respondent-Applicant likewise submitted documentary evidence - numerous sales invoices - indicating that the mark was already in use in the Philippines as early as 2004. Thus, whether or not the Opposer has a connection to SRV Canea Corporation, the entity that purportedly issued the sales invoices submitted by the said party, is of already of no moment. The probative value of these sales invoices, assuming *in arguendo* that the veracity

⁵ See Sec. 236 of the IP Code.

⁶ G.R. No. 183404, 13 Oct. 2010.

thereof is unimpeachable, is limited to suggesting the dates and place products supposedly bearing the brand or mark "TM Flex" were sold.

Even the sample of the mark purportedly used by the Opposer for advertising and promotions amplifies the doubt regarding the said party's claim of ownership of the subject mark. The sample shows that printed below "FLEXMASTER" are the words "by GOLDEN SUN", which implies a party other than the Opposer.

The Respondent-Applicant's standing in this case is bolstered by the fact that even before the purported use by the Opposer of the trademark TM FLEXMASTER in 2006, the Respondent-Applicant has been using another mark which contain the word or syllable "FLEX" and also for use on carpets, rugs, mats and matting, and linoleum products. The Respondent-Applicant filed 26 October 2005 an application for the registration of the mark "PGFLEX". She was issued Cert. of Reg. No. 4-2005-010634 on 09 April 2007. In addition, the Respondent-Applicant and her business partners have an array of registered and/or pending applications for "FLEX" marks for use on carpets, rugs, mats and matting, and linoleum products, among others, to wit:

1. "RGFLEXMASTER (STYLIZED)" under Cert. of Reg. No. 4-2008-004626 issued on 10 November 2008 (application filed on 21 April 2008);
2. "RGFLEX (STYLIZED)", under Trademark Application Serial No.4-2008-006422 filed on 02 June 2008; and
3. "EUROFLEX", under Trademark Application Serial No. 4-2009-005846 filed on 15 June 2009.

Obviously, the word or syllable "FLEX" in the abovementioned marks is conspicuous enough such that when two or several marks containing FLEX, as a feature or part thereof and used on similar products, are lined up or placed side by side, one is likely to conclude that the products bearing these marks came from the same manufacturer or origin.

There is no evidence, however, that the Opposer contested the registration of PGFLEX. In contrast, there is no sense in casting doubt regarding the Respondent-Applicant's ownership on the ground that she did not oppose the Opposer's application. An opposition may be filed only after the trademark application is published, precisely for opposition purposes. As discussed above, the Opposer's application was abandoned as early as 06 January 2008. Hence, it has not yet been allowed and published before the instant opposition case was filed. Thus, there is no way that the Respondent could have filed an opposition.

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.⁷ Clearly, the Respondent-Applicant's trademark satisfies this function test.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let

⁷ *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).

the filewrapper of Trademark Application Serial No. 4-2008-004625 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 13 August 2012.



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

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