



SHOEMAKER'S SHOP, INC.,
Opposer,

-versus-

PEOPLE'S GARMENTS PUBLIC
COMPANY LIMITED,
Respondent- Applicant.

}
}
}
}
}
}
}
}
}
}

IPC No. 14-2013-00131
Opposition to Trademark:
Appln. Serial No. 4-2012-011028
Date filed: 10 September 2012
TM: "360 THREE SIX O SWIM"

X-----X

NOTICE OF DECISION

SIOSON SIOSON & ASSOCIATES
Counsel for the Opposer
Unit 903 AIC-BURGUNDY EMPIRE TOWER
ADB Avenue corner Garnet & Sapphire Roads
Ortigas Center, Pasig City

LOZADA BALDEMOR-SANCHEZ & CO.
Counsel for Respondent-Applicant
33 F. Palau Street, Sacred Heart Village
Greater Fairview, Quezon City

GREETINGS:

Please be informed that Decision No. 2013 - 241 dated December 16, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 16, 2013.

For the Director:

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



SHOEMAKER'S SHOP, INC.,

Opposer,

IPC No. 14-2013-00131

Opposition to Trademark

-versus-

Application No. 4-2012-011028

Date Filed: 10 September 2012

**PEOPLE'S GARMENT PUBLIC
COMPANY LIMITED,**

Trademark: **"360 THREE SIX
O SWIM"**

Respondent-Applicant.

x ----- x Decision No. 2013- 24

DECISION

Shoemaker's Shop, Inc.¹ ("Opposer") filed on 08 May 2013 an opposition to Trademark Application Serial No. 4-2012-011028. The contested application, filed by People's Garment Public Company Limited² (Respondent-Applicant), covers the mark "360 THREE SIX O SWIM" for use on *"clothing, namely shirts, t-shirts, polo shirts, jackets, sweaters, suits, pyjamas, pants, trousers, shorts, slacks, jeans, underwear, neckties, skirts, belts (clothing), sports garments, swimming suits, footwear, namely, sports shoes, shoes, socks, headgear, namely, caps, hats"* under Class 25 of the International Classification of Goods³.

Opposer maintains that the trademark "360 Three Sixty and Device" is duly registered in its favor under Registration No. 4-1999-008497 for use on keychains, eyewear, bags, shoes, slippers, sandals, boots, t-shirts, polo, jeans, polo shirts, pants, slacks, shorts, jackets, skirts, sweatshirts, jogging suits, caps, socks, belt, sandos, briefs, panties, blouses, swimsuits, bras, stockings, swimming trunks, falling under Classes 6,9, 18 and 25. It asserts that it did not abandon its registered mark but instead, has continued its use.

Opposer bewails that Respondent-Applicant's mark "360 Three Six O Swim" is a colorable imitation of its registered mark and thus, the registration thereof is contrary to Section 123.1 (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code"). It asserts that Respondent-Applicant's mark is confusingly similar to its own and will dilute the distinctiveness of the latter.

¹ A corporation duly organized and existing under the laws of the Philippines with postal and business address at 23 Guerilla Street, Sto. Niño, Marikina City.

² With address at 666 Rama 3 Road, Bangpongpan, Yannawa, Bangkok 10120, Thailand.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks concluded in 1957.

Republic of the Philippines

INTELLECTUAL PROPERTY OFFICE

Intellectual Property Center, 28 Upper McKinley Road, McKinley Hill Town Center
Fort Bonifacio, Taguig City 1634 Philippines

T: +632-2386300 • F: +632-5539480 • www.ipophil.gov.ph

In support of its allegations, Opposer submitted the following as evidence:

1. certified machine copy of Shoemaker's Shop, Inc.'s Amended Articles of Incorporation;
2. certified true copy of Certificate of Registration No. 4-1999-008497 for the trademark "360 Three Sixty and Device";
3. certified copies of the Declarations of Actual Use filed by Opposer last 30 July 2002 and 28 November 2011;
4. certified copies of Opposer's representative official receipts, delivery receipts, sales invoice and photographs of representative products bearing its registered mark "360 Three Sixty and Device";
5. print-out of Respondent-Applicant's mark "360 Three Six 0 Swim", as published in the e-Gazette last 12 March 2013; and,
6. duly notarized affidavit of Guillermo Chutick, Chairman of the Board of Shoemaker's Shop, Inc.

On 22 May 2013, a Notice to Answer was issued and served to Respondent-Applicant. However, the latter failed to comply. This prompted the Hearing Officer to issue Order No. 2013-1475 on 24 October 2013 declaring Respondent-Applicant in default and submitting the case for decision.

Ultimately, the issue to be resolved is whether the Respondent-Applicant's mark "360 Three Six 0 Swim" should be allowed registration.

Records reveal that at the time Respondent-Applicant filed its application of its mark "360 Three Six 0 Swim" on 10 September 2012, the Opposer has a valid and existing registration of the mark "360 Three Sixty and Device issued on 28 November 2005. Clearly, the latter is the prior registrant.

Now, to determine whether the competing marks are indeed confusingly similar, the two are reproduced below for comparison:



Opposer's mark



Respondent-Applicant's mark

Both trademarks share the same concept of using the numerical representation of "360" as its prevalent feature. This is what is retained in the eyes and mind when one looks at both marks. This is highlighted by the fact that aside from the numerical representation, both marks spell out the number "360". Though the Opposer spelled it out as "Three Sixty" while Respondent-Applicant used "Three Six O", the idea is the same nonetheless. Even with the differences in presentation and the addition of the word "swim" in Respondent-Applicant's mark, the standard of distinctiveness required by law is still not met.

Succinctly, confusion cannot be avoided by merely adding, removing or changing some 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.⁴ This Bureau also quotes with favor the ruling of the Supreme Court in the case of **Del Monte Corporation vs. Court of Appeals**⁵, thus:

"The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."

Moreover, since the Respondent-Applicant will use or uses the mark "360 Three Six O Swim" to goods that are similar and/or closely related to that of Opposer's registered mark "360 Three Sixty and Device", i.e. Class 25, the minor differences will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. It is highly probable that the purchasers will be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. Withal, 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 period of time, but also to safeguard the public as consumers against confusion on these goods.⁶

⁴ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁵ G.R. No. L-78325, 25 January 1990.

⁶ Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

Furthermore, it is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."⁷

Finally, it is emphasized that 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.⁸ Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend its trademark application but Respondent-Applicant did not bother to do so.

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

"123.1. 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; xxx"

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filer wrapper of Trademark Application Serial No. 4-2012-

⁷ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

⁸ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

011028 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 16 December 2013.



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