



SUYEN CORPORATION,
Opposer,

-versus-

CEREXAGRI,
Respondent-Applicant.

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}
} **IPC No. 14-2011-00284**
} Opposition to:
} Appln. Serial No. 4-2011-002059
} Date Filed: 24 Feb. 2011
} Trademark: "CUPROFIX"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 – 187 dated September 28, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 28, 2012.

For the Director:


Atty. PAUSI U. SAPAK
Hearing Officer
Bureau of Legal Affairs



SUYEN CORPORATION,

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- versus -

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IPC No. 14-2011-00284

Opposition to:

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TM: CUPROFIX

Decision No. 2012- 187

DECISION

SUYEN CORPORATION (“Opposer”)¹ filed on 19 July 2011 an opposition to Trademark Application Serial No. 4-2011-002059. The application, filed by CEREXAGRI (“Respondent-Applicant”)², covers the mark “CUPROFIX” for use on “*fungicides*” under class 5 of the International Classification of goods.³

The Opposer anchors its opposition on Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”), alleging that CUPROFIX is confusingly similar to its registered marks “FIX Bench Salon”, “I-FIX & Device of letter I”, and “bench/FIX PROFESSIONAL”. According to the Opposer, the registration of CUPROFIX will mislead the public or cause confusion as to the origin of the goods and business thereby causing damage to the Opposer.

To support its opposition, the Opposer submitted the following:

1. Affidavit of Mr. Jude W. Ong;
2. certified copies of certificates of registration, particularly, No. 4-2000-002133 (FIX), No. 4-2011-004439 (FIX Bench Salon), No.4-2002-008629 (I-FIX & DEVICE of letter I), and No.4-2002-008636 (bench/FIXPROFESSIONAL); and
3. photographs of FIX products, Fix Bench salons, Bench Go Kiosk, advertising campaign materials, Bench Cosmetics Catalog featuring the different FIX products.⁴

The Respondent-Applicant filed on 11 January 2012 its Answer refuting the allegation that CUPROFIX is confusingly similar to the Opposer’s registered marks. The Respondent-Applicant contends that the goods indicated in its trademark application are different from those covered by the Opposer’s registered marks. It also claims that the mark FIX is not highly distinctive citing the registration of other trademarks with the word FIX.

The Respondent-Applicant’s evidence consists of the following:

1. sample of CUPROFIX product label;

¹ A corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with offices located at 2214 Tolentino Street, Pasay City.

² A corporation organized and existing under the laws of France with business address at 1 Rue des Freres Lumiere, 78370 Plaisir, France.

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.

⁴ Marked as Exhibits “A” to “W”, inclusive.

2. list of Cerexagri's world wide trademark application and/or registrations for CUPROFIX;
3. official copy of the Extract of Registration Cert. No. 155575 from WIPO;
4. certified copy of Reg. Cert. No. 4-2007-001949 covering "fungicides" under class 5;
5. pertinent pages of the Product Stewardship and Responsible Care downloaded from <http://fpa.da.gov.ph/>; and
6. certified copies of Reg. Cert. No. 4-2001-001797 for TIGHT FIX for use on "face cream", Reg. Cert. No. 4-1996-110048 for FLEXI FIX for use on "Soaps; Perfumes; essential oils; cosmetics into skin creams, perfumes, make-up foundation, rouge, lip pencils, eyebrow pencils, eye shadow and mascara, hair lotions, dentifrices", Reg. Cert. No. 4-1996-108230 for FLEXI FIX for use on "soaps; perfumes; essential oils, hair lotions, dentifrices, skin creams, perfumes, make-up foundation, rouge, lip pencils, eyebrow pencils, eye shadow and mascara", Reg. Cert. No. 4-2004-007839 for ROUGE COLOR FIX for use on "soaps, perfumeries and cosmetics, namely, skin care, hair care, body care, and make-up products", Reg. Cert. No. 4-2009-012744 for LP STAYS FIX for use on "cosmetics, preparations for bath, hair care preparation", Reg. Cert. No. 4-2003-011656 for THERMAL FIX for use on "perfume, soaps, cosmetics for the face, body, and the hands", Reg. Cert. No. 4-2001-004227 for PEDIA FIX TALL & HEALTHY for use on "supplemental health preparations for children", Reg. Cert. No. 4-2009-003870 for FIX-A for use on "Antibacterial, Pharmaceutical products".⁵

The Hearing Officer issued on 02 February 2012 Order No. 2012-33 referring the case to mediation pursuant to Office Order Nos. 154 and 197, both series of 2010. The parties, however, refused to mediate. After the preliminary conference, the Respondent-Applicant filed its Position Paper on 08 March 2012 while the Opposer did so on 12 March 2012.

Should the Respondent-Applicant be allowed to register the mark CUPROFIX?

Sec. 123.1 (d) of the 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.

In this regard, records show that at the time the Respondent-Applicant filed its trademark application on 24 February 2011, the Opposer has existing trademark registrations, particularly, No. 4-2000-002133 (FIX), No.4-2002-008629 (I-FIX & DEVICE of letter I), and No.4-2002-008636 (bench/FIX PROFESSIONAL). However, the goods covered by these registrations, namely "Hair lotion, hair gel, hair creme, hair polish, hair shampoo, hair conditioner", are not similar or closely related to those indicated in the Respondent-Applicant's trademark application.

This Bureau finds untenable the argument that the CUPROFIX is identical or confusingly similar to the Opposer's registered marks. The only feature in the Respondent-Applicant's mark that is identical to the Opposer's are the letters or syllable or word "FIX". FIX however, is a word in the English language, not an invention of the Opposer. Hence, FIX alone is not unique. If used as a mark or part or component of a mark, the mark is distinctive only insofar as the goods on which it is attached to are concerned. "Fungicides" are so different from "hair lotion, hair gel, hair creme, hair polish, hair shampoo, hair conditioner" in terms of composition, nature and purpose, such that it is unlikely for consumers who buy or chance upon the Respondent-Applicant's mark and products to associate or connect them to the Opposer.

The essence of the trademark registration is to give protection to the owners of trademarks.

⁵ Marked as Exhibits "1" to "13".

The function of the trademark is to point out distinctly the origin or the 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 that the public are procuring the genuine article; to prevent fraud and imposition; to protect the manufacturer against and sale of inferior and different article as his products⁶. The Respondent-Applicant's mark sufficiently serves this function.

WHEREFORE, the premises considered, the instant opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2011-002059 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 28 September 2012.



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



⁶ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999, citing *Etepha v. Director of Patents*, 16 SCRA 495.