



SUYEN CORPORATION,
Opposer,

-versus-

MANSHA SHOPPER'S CHOICE CORP.,
Respondent - Applicant.

X-----X

}
} IPC No. 14-2012-00450
} Opposition to:
} Appln. Serial No. 4-2012-740032
} Date filed: 13 February 2012
} TM: "KRIS SENSUAL PERFUME
} BODY LOTION AND DEVICE"

NOTICE OF DECISION

MIGALLOS & LUNA LAW OFFICE

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MANSHA SHOPPER'S CHOICE CORPORATION


Respondent-Applicant
Angeles Building, # 4 Ramon Magsaysay Avenue
Davao City

GREETINGS:

Please be informed that Decision No. 2014 - 24 dated January 29, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, January 29, 2014.

For the Director:


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



SUYEN CORPORATION,	}	IPC No. 14-2012-00450
<i>Opposer,</i>	}	Opposition to:
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-versus-	}	Appln. Serial No. 4-2012-740032
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MANSHA SHOPPER'S CHOICE	}	TM: KRIS SENSUAL PERFUME
CORPORATION,	}	BODY LOTION AND DEVICE
<i>Respondent-Applicant.</i>	}	
x-----x		Decision No. 2014- <u>24</u>

DECISION

SUYEN CORPORATION ("Opposer")¹ filed on 03 December 2012 an opposition to Trademark Application Serial No. 4-2012-740032. The application, filed by MANSHA SHOPPER'S CHOICE CORPORATION ("Respondent-Applicant")², covers the mark "KRIS SENSUAL PERFUME BODY LOTION AND DEVICE" for use on "body lotion" under Class 3 of the International Classification of Goods and Services³.

The Opposer anchors its opposition on the ground that the registration of the mark KRIS SENSUAL PERFUME BODY LOTION AND DEVICE in the name of the Respondent-Applicant is contrary to Section 123.1 (d) of the Intellectual Property Code of the Philippines ("IP Code") which prohibits the registration of a mark that:

- (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.

According to the Opposer, KRIS SENSUAL PERFUME BODY LOTION AND DEVICE is confusingly similar to its registered trademark "KRIS". To support its opposition, the Opposer submitted/presented an evidence the following:

¹ A corporation duly organized and existing under Philippine Law with offices located at 2214 Tolentino Street, Pasay City.

² A corporation organized under Philippine Law, with business address at Angeles Building, No. 4 Ramon Magsaysay Avenue, Davao City.

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

1. Exhibit "A" – Affidavit of Suyen's Group Brand Manager, Mr. Dale Gerald G. Dela Cruz;
2. Exhibits "B" to "B-4" – Photographs of the products covered by the mark KRIS;
3. Exhibit "C" – Certified copy of Certificate of Reg. No. 4-2005-012470 for the mark "KRIS";
4. Exhibits "D", "D-1" to "D-3" – Promotional posters attached to Dela Cruz Affidavit;
5. Exhibits "E", "E-1" and "E-2" – Copies of sample press releases for the KRIS AQUINO SCENTS COLLECTION;
6. Exhibits "F" to "F-3" – Photocopies of the BENCH Care Catalogue featuring KRIS and the rest of the KRIS AQUINO Scents Collection;
7. Exhibits "F" to "F-3" – Photocopies of the BENCH Care Catalogue featuring KRIS and the rest of KRIS AQUINO Scents Collection; and
8. Exhibit "G" – Copy of Trademark Application Serial No. 4-2012-740032 for the mark "KRIS SENSUAL PERFUME LOTION AND DEVICE filed by the Respondent-Applicant on 13 February 2012.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 16 January 2013. However, the Respondent-Applicant did not file an answer. Thus the Hearing Officer issued Order No. 2013-994 on 11 July 2013 declaring the Respondent-Applicant in default and the instant opposition deemed submitted for decision.

Should the Respondent-Applicant trademark application be allowed?

It is emphasized that the essence of trademark registration is to give protection to the owner of the 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 products.⁴

Records show that at the time the Respondent-Applicant filed its trademark application on 13 February 2012, the Opposer has an existing Trademark Registration No. 4-2005-012470 issued on and/or the date of registration, 16 April 2007 for the mark KRIS used on "EAU DE TOILETTE" under Class 3 of the International Classification of Goods and Services⁵. The goods indicated in the Respondent-Applicant's application are similar and/or closely related to those covered by the Opposer's trademark registration.

But are the competing marks confusingly similar as shown below?

⁴ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999

⁵ Exhibit "C".



Opposer's Mark



Respondent-Applicant's Mark

Jurisprudence says that a practical approach to the problem of similarity or dissimilarity is to go into the whole of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of the prospective buyer. The trademark complained should be compared and contrasted with the purchaser's memory of the trademark said to be infringed. Some factors such as sound; appearance; form, style, shape, size or format; color, idea connoted by the mark; the meaning, spelling and pronunciation of the words used; and the setting in which the words used, may be considered for indeed, trademark infringement is a form of unfair competition⁶.

The Opposer's mark is the word "KRIS" while the Respondent-Applicant's mark is a composite one consisting of the words "KRIS SENSUAL PERFUME BODY LOTION". The word common in the competing mark is "KRIS". They are exactly the same in spelling and pronunciation. When pronounced, it is the first part or portion of the Opposer's mark being uttered and immediately draws and/or gives impression in the minds of the public. That the Respondent-Applicant's mark is composite is of no moment. The words PERFUME BODY LOTION are descriptive of the goods and does not add distinctive property on the marks. In fact, it was disclaimed. It is stressed that 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 ingenious imitation as to be calculated to deceive ordinary persons or such resemblance to the original as to deceive ordinary purchasers as to cause him to purchase the one supposing it to be the other⁷. Colorable imitation does not mean such similarities as amounts to identity, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in the form, content, words, sound, meaning, special arrangement or general appearance of the trademark or tradename with that of the other mark or tradename in their over-all presentation or in their essential, substantive and distinctive parts as would likely to mislead or confusion on persons in the ordinary course of purchasing genuine article⁸.

⁶ Clarke v. Manila Candy Co. 36 Phil 100, 106, Co Tiong SA v. Director of Patents as Phil. 1, 4.

⁷ Societe Des Produits Nestle S.A. v. Court of Appeals G.R. No. 112012, 04 April 2001.

⁸ Emerald Garment Manufacturing Corp., v. Court of Appeals, G.R. No. 100098, 29 Dec. 1995.

Considering therefore, that the competing marks are confusingly similar, consumers will likely assume, that the Respondent-Applicant's mark is just a variation of or related to the Opposer's and/or the goods or services originate or provided by one party alone or the parties themselves are connected or associated with one another while in fact there is none. The likelihood of confusion would subsist not only the purchaser's perception of the goods but on the origins thereof as held by the Supreme Court⁹.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Section 123.1 (d) of the Intellectual Property Code of the Philippines ("IP Code") R.A. No. 8293.

WHEREFORE, premises considered the instant opposition is hereby **GRANTED**. Let the filewrapper of Trademark Application Serial No. 4-2012-740032 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 29 January 2014.


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

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⁹ Converse Rubber Corp. v. Universal Rubber Products, Inc. et.al. G.R. No. L-27906, 08 January 1987.