



SUYEN CORPORATION,
Opposer,

-versus-

ONESIMUS CORPORATION,
Respondent- Applicant.

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}
} IPC No. 14-2011-00235
} Opposition to:
} Appln. Serial No. 4-2010-011177
} Date Filed: 12 October 2010
} TM: "LUXXE LOGO "
}

NOTICE OF DECISION

MIGALLOS & LUNA OFFICES

Counsel for the Opposer
7th Floor, The Phinma Plaza
39 Plaza Drive, Rockwell Center
Makati City

ELIZABETH B. MACAIBAY

For the Respondent-Applicant
Rm. 302 Philippine Social Science Center
Commonwealth Avenue, Diliman
Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 130 dated May 09, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 09, 2014.

For the Director:


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



SUYEN CORPORATION,
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IPC NO. 14-2011-00235
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Decision No. 2014- 130

DECISION

SUYEN CORPORATION¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2010-011177. The application, filed by ONESIMUS CORPORATION², ("Respondent-Applicant"), covers the mark "LUXXE LOGO" for use on "*men's wear and accessories namely: barong, suits (coat and pants), executive shirts, jackets, socks, knitted wear, vest, belts, neckties, shoes, bags*" under Classes 18 and 25 of the International Classification of Goods and Services³.

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"). According to the Opposer, LUXXE LOGO is identical to or confusingly similar to its marks "T LUXE & DEVICE" and "LUXE BLEND (Stylized)" which were previously registered in the Philippines. To support its opposition, the Opposer submitted the following pieces of evidence:

1. Exhibit "A" – Affidavit of Dale Gerald G. Dela Cruz;
2. Exhibit "B" – Copy of Deed of Assignment of Trademark(s), dated 02 June 2010;
3. Exhibit "C" – certified true copy of the certificate of trademark registration for T LUXE & DEVICE;
4. Exhibit "E", "E-1", "E-2" and "E-3" – photographs of ladies shoes products bearing the trademark T LUXE & DEVICE;
5. Exhibit "F", "F-1" and "F-2" – photographs of handbag products bearing the trademark T LUXE & DEVICE;
6. Exhibit "G" – certified true copy of the certificate of trademark registration for the mark LUXE BLEND (STYLIZED); and
7. Exhibit "H", "H-1", "H-2", "H-3", "H-4", "H-5" and "H-6" – photographs of products bearing the LUXE BLEND mark.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 05 August 2011. The Respondent-Applicant, however, did not file an Answer.

Should the mark LUXXE LOGO be registered in favour of the Respondent-Applicant?

¹ A domestic corporation with principal address at 2214 Tolentino St., Pasay City, Philippines

² A domestic corporation with principal address at 592 Cordillera St., Mandaluyong City, Philippines.

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.

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.⁴

In this regard, Sec. 123.1(d) of the IP Code provides that a mark shall not be registered if:

- (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.

Records show that at the time Respondent-Applicant file its trademark application, the Opposer already has existing trademark registrations in the Philippines for the marks LUXE BLEND (STYLIZED) under Reg. No. 4-2006-008492 issued on 12 March 2007, and T LUXE & DEVICE under Reg. No. 4-2007-002067 issued on 01 October 2007. Reg. No. 4-2006-008492 covers “men’s and ladies denim pants, pants, slacks, shorts, trousers, jogging pants” under Class 25. Reg. No. 4-2007-002067 on the other hand covers “ladies handbags, ladies clutch bags” under Class 18 and “ladies shoes, ladies slippers” under Class 25. These goods are similar and/or closely related to those indicated in the Respondent-Applicant’s trademark application.

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

Opposer’s registered trademarks

The logo for 'Luxe Blend' is written in a highly decorative, cursive script. The letters are interconnected, with a prominent flourish under the 'L' and 'B'. The overall style is elegant and classic.

Respondent-Applicant’s applied mark

The logo for 'LUXXE' is presented in a bold, blocky, sans-serif font. The letters are white and set against a solid black rectangular background. The 'X' is notably wider than the other letters.

The Respondent-Applicant appropriated the word “LUXXE” which is, in looks and in sound is practically identical to the word “LUXE”. “LUXE”, however, is the feature that renders the Opposer’s marks distinctive. That the Respondent-Applicant did not copy all the features and the style employed in the Opposer’s mark, and the fact that LUXXE has two Xs, is of no moment. Confusion cannot be avoided by merely adding, removing or changing some letters of a registered

⁴ *Pribhdas J. Mirpuri vs. Court of Appeals*, G.R. No. 114508, 19 Nov.1999.

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several connected strokes.

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 other⁵. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:⁶

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. xxx


Succinctly, because the Respondent-Applicant will use or uses the mark LUXXE LOGO on goods that are similar and/or closely related to the goods dealt in by the Opposer under its LUXE BLEND (STYLIZED) and T LUXE & DEVICE marks, there is the likelihood that information, assessment, perception or impression, whether good or positive, on the goods sold by the Respondent-Applicant may unfairly be cast upon or attributed to the Opposer. Consumers may assume that there is a business association between the parties and/or their goods and services, when in fact there is none.

It is very difficult to understand and highly improbable if the circumstance was purely coincidence. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of letters available, the Respondent-Applicant had come up with a mark identical or so nearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁷

WHEREFORE, premises considered, the instant Opposition is hereby **SUSTAINED**. Let the file wrapper of Trademark Application Serial No. 4-2010-011177 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 09 May 2014.


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

⁵ *Societe Des Produits Nestle , S.A v. Court of Appeals*, G.R. No.112012, 4 April 2001, 356 SCRA 207, 217.
⁶ *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.
⁷ *American Wire and Cable Co. v. Director of Patents, et. al* (SCRA 544) G.R. No. L-26557 18 Feb. 1970.