



SUYEN CORPORATION,  
Opposer,

-versus-

PURE ATHLETICS, INC.,  
Respondent- Applicant.

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} IPC No. 14-2012-00477  
}  
} Opposition to:  
} Appln. Serial No. 4-2012-007342  
} Date filed: 19 June 2012  
} TM: "T and Design"  
}  
}  
}  
}

**NOTICE OF DECISION**

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Taguig City

**GREETINGS:**

Please be informed that Decision No. 2013 - 125 dated July 11, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 11, 2013.

For the Director:



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



**SUYEN CORPORATION,**  
*Opposer,*

**IPC No. 14-2012-00477**  
Case Filed: 21 December 2012

-versus-

Opposition to:  
Appln. Serial No. 4-2012-007342  
Date Filed: 19 June 2012

**PURE ATHLETICS, INC.,**  
*Respondent-Applicant.*

**TM: "T and DESIGN"**

X-----X

**Decision No. 2013- 125**

### DECISION

SUYEN CORPORATION ("Opposer")<sup>1</sup> filed an opposition on 21 December 2012 to Trademark Application Serial No. 4-2012-007342. The application, filed by PURE ATHLETICS, INC. ("Respondent-Applicant")<sup>2</sup>, covers the mark "T and DESIGN" for use on "golf shoes, footwear, apparel, namely, shirts, pants, shorts, jackets, hats, socks, gloves and sweaters" under Class 25 of the International Classification of Goods and Services<sup>3</sup>.

The Opposer anchors its opposition on the ground that the Respondent-Applicant's mark "T and DESIGN" is identical to and confusingly similar with Opposer's duly registered trademarks and will be damaged by the registration and use of the said mark by the Respondent-Applicant.

In support of its opposition, the Opposer submitted in evidence the following:

1. Exhibit "A" – Affidavit of Mr. Dale Gerald G. Dela Cruz;
2. Exhibit "B" – Certified copy of the Deed of Assignment of Trademarks;
3. Exhibits "C", "D", "E" and "F" – Are certified true copies of the Certificates of Registration covering the mark "T Trademarks";
4. Exhibit "G" – Certified copy of Memorandum of Agreement;
5. Exhibit "H" – Certified copy of the Deed of Assignment dated 02 June 2010;
6. Exhibit "I" – Certified copy of the letter from TBCI dated 02 June 2010 informing Rockwell Land Corporation of Assignment of Lease;
7. Exhibit "J" – Certified copy of the corresponding Deed of Assignment;

<sup>1</sup> A corporation duly organized and existing under Philippines laws with office at 2214 Tolentino Street, Pasay City.

<sup>2</sup> A foreign corporation with business address at 13402 N. Scottsdale Rd. B-191, Scottsdale, AZ 85254 U.S.A.

<sup>3</sup> 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.

8. Exhibits "K" and "L" – Certified copies of TBCI's letter to Ayala Malls Group informing the latter of the Assignment and the letter from Ayala Land Consenting to the Assignment of Lease;
9. Exhibits "M" to "M-10" – Photographs of the various shoes and bags products bearing the trademark "T Inside A Standing Rectangular Design";
10. Exhibits "M-11" to "M-13" – Photographs of various shoes and bag products bearing the trademark "Little T & Device";
11. Exhibits "M-14" to "M-15" – Photographs of various shoes bearing the trademark "T Luxe & Device";
12. Exhibits "M-16" to "M-18" – Photographs of the T trademarks as used by Suyen; and
13. Exhibit "N" – Copy of an advertisement featuring the T products of Suyen in August 2010 of Meg Magazine.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 13 February 2013. However, no answer was filed, hence this instant opposition is considered submitted for decision based on the opposition and evidence submitted by the Opposer.

Should the Respondent-Applicant's 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<sup>4</sup>.

Thus, Sec. 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("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.

The records show that at the time the Respondent-Applicant filed its trademark application on 19 June 2012, the Opposer already owns trademark registrations for "T Trademarks". The registrations were issued on 10 March 2006, 06 August 2007 and 01 October 2007, in favor of TEG BAGS COMPANY, INC. and which cover goods under Class 18. TEG BAGS COMPANY, INC. executed on 02 June 2010 a DEED OF ASSIGNMENT transferring, conveying and ceding the trademark registrations to the Opposer.

In this regard, scrutiny of the mark applied for registration by the Respondent-Applicant shows that the same is nearly identical to the Opposer's "T Trademarks" as shown below:

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



Respondent-Applicant's Mark



T with word studio



T Inside a Standing Rectangular Design



T LUXE & DEVICE



Little T & Device

Opposer's Mark

The competing marks both contained the letter "T" which is either the very trademark registered in the name of SUYEN, ("OPPOSER") or the dominant feature in the Opposer's registered trademarks. There is a slight distinction in the other portion or element of the competing marks, however, such variance is without any significance because the aural and visual similarity in the dominant or prevalent feature is already sufficient to give rise to confusing similarity. In the instant opposition proceedings, the Respondent-Applicant will use or uses the mark it applied for registration on goods that are similar and/or closely related to those covered by the Opposer's registered marks, the slight distinction or variance did not diminish the likelihood of the occurrence of mistake, confusion or even deception cannot be avoided. 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 and services originate or provided by one party alone, or the parties themselves are connected or associated with one another which in fact

there is none. The likelihood of confusion would subsist not only on the purchaser's perception of the goods but on the origins thereof as held by the Supreme Court<sup>5</sup>:

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 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

Thus, this Bureau finds that the subject trademark application is proscribed by Sec. 123.1 par (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), to wit:

- (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.

It is stressed that the Respondent-Applicant was given opportunity to explain its side and defend its trademark application. However, it failed or chose not to do so.

**WHEREFORE**, premises considered the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-007342 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 11 July 2013.

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



/pausi/Joanne

<sup>5</sup> Converse Rubber Corporation v. Universal Rubber Products, Inc. et.al. G.R. No. L-27906, 08 Jan. 1987.