



SUYEN CORPORATION,
Opposer,

-versus-

RAMON UY, JR.,
Respondent-Applicant.

X-----X

} **IPC No. 14-2012-00040**
}
} Opposition to:
} Appln. Serial No. 4-2011-013076
} Date Filed: 28 October 2011
} **TM: "FRESH START"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2013 - 146 dated July 24, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 24, 2013.

For the Director:


Atty. PAUSI U. SAPAK
Bureau of Legal Affairs



SUYEN CORPORATION,
Opposer,

IPC No. 14-2012-00040
Case Filed: 26 March 2012

-versus-

Opposition to:
Appln. Serial No.: 4-2011-013076
Date Filed: 28 October 2011

RAMON UY, Jr.,
Respondent-Applicant.

TM: "FRESH START"

x-----x

Decision No. 2013- 146

DECISION

SUYEN CORPORATION ("Opposer")¹ filed an opposition on 26 March 2012 to Trademark Application Serial No. 4-2011-013076. The application, filed by RAMON UY, JR. ("Respondent-Applicant")², covers the mark "FRESH START" for use on "meat, fish, poultry, eggs, juices, oils, coffee, condiments, herbs and spices, rice, fresh fruits and vegetables, live animals, seeds, natural plants and flowers, organic fertilizer, organic feeds" under Classes 29, 30 and 31 of the International Classification of Goods and Services³.

The Opposer anchors its opposition on the ground that the Respondent-Applicant's mark "FRESH START" is identical to and confusingly similar to Opposer's trademark. The adoption and appropriation of the mark "FRESH START" will work great damage and prejudice to SUYEN. The said mark will also mislead the public into believing that the products marketed and sold by Opposer and that the goods originated from the same source.

To support its opposition, the Opposer submitted the following:

1. Exhibit "A" – Affidavit of Suyen's Group Brand Manager, Mr. Dale Gerald G. Dela Cruz;
2. Exhibit "B" – Certified copy of Certificate of Registrations No. 4-2010-005483 for the mark FRESH START;
3. Exhibits "C" to "C-3" and "D" and "D-1" – Attached to the Affidavit of Dela Cruz;
4. Exhibits "E" to "E-5" – Sample promotional materials that have been posted, displayed or distributed;

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 Filipino citizen, with address at Sta. Veronica Street, Sta. Clara, Subdivision, Bacolod 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.

5. Exhibits "F" to "F-2" – Local news papers and popular lifestyle magazine nationwide where the products bearing FRESH START has been advertised;
6. Exhibits "G" to "G-6" – Photograph of the snacks being manufactured and sold by SUYEN;
7. Exhibits "H" to "H-4" – Photographs of the BE CONNECTED internet café's of SUYEN;
8. Exhibits "I" to "I-5" – The Bench/organic products of SUYEN from moisturizing soap to facial cleaner wipes;
9. Exhibits "J" to "J-6" – Printouts from Respondent-Applicant's website showing a variety of personal care products manufactured and marketed by Respondent-Applicant bearing the mark FRESH START; and
10. Exhibit "K" – Search result taken from the website of IPOPHL showing the mark FRESH START filed for registration.

On 17 May 2012, the Respondent-Applicant filed his answer denying all the material allegations of the opposition and argued that his mark is not identical nor confusingly similar to Opposer's mark.

This case was referred to mediation pursuant to Order No. 2012-199 dated 22 October 2012 citing as basis Office Order No. 154.s.2010. The mediation, however, failed.

Accordingly, the Hearing Officer on 27 December 2013 issued a notice setting the Preliminary Conference on 28 January 2013. The Respondent-Applicant failed to attend the conference and thus is considered to have waived his right to file position paper.

Should the Respondent-Applicant's trademark application be allowed?

Sec. 123.1 (d) of the IP Code provides that 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.

The records show that at the time the Respondent-Applicant filed his trademark application on 28 October 2011, the Opposer has already and existing Trademark Registration No. 4-2010-005483, date of registration 07 July 2011 for the mark "FRESH START" used on body spray, body mist, splash cologne, eau de toilette, deo body spray, talcum powder, hand and body lotion" under Class 3 of the International Classification of Goods and Services⁴.

The marks applied for registration by the Respondent-Applicant is identical to the Opposer's registered mark. This Bureau noticed however, that the goods indicated in the

⁴ Exhibit "B".

Respondent-Applicant's trademark application are different, not even closely related, to those covered by Opposer's trademark registration. The differences in the kinds of goods on which the opposing mark are used on, and in the manner by which these goods are accessed to by the consumers, render confusion unlikely.

Moreover, the Opposer's mark is a word mark, consisting of two ordinary marks in the English language and are part, of everyday communication. Hence, the mark's uniqueness or distinctiveness is limited to the goods covered by the registration and those that are closely related thereto. As such, the resemblance between the marks is unlikely to confuse, much less deceive. It is very remote the probability of a consumer recalling the Opposer's goods when confronted with the Respondent-Applicant's. More unlikely is the consumer being swayed into buying the Respondent-Applicant's goods just because it bears a mark identical to the Opposer's.

The Supreme Court held:

"The trademark 'CANON' as used by Petitioner for its points, chemical products toner and dyestuff⁵ can be used by private respondent for its sandals⁶ because the products of these two parties are dissimilar⁷."

And in *Faberge, Incorporated v. Intermediate Appellate Court*⁸, the Supreme Court sustained the Director of Patents which allowed the Junior user to use the trademark of the Senior user on the ground that the briefs manufactured by the Junior user, the product for which the trademark "BRUTE" was sought to be registered, was unrelated and non-competing with the products of the Senior user consisting of after shave lotion, shaving cream, deodorant, talcum powder and toilet soap.

Also, in another case, the Supreme Court ruled that:

"The Petroleum products on which the Petitioner therein uses the trademark ESSO, and the product of Respondent, cigarettes are so foreign to each other as to make it unlikely that purchasers would think that Petitioner is the manufacturer of Respondent's goods⁹."

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

⁵ Under Class 2.

⁶ Class 25.

⁷ *Canon Kabushiki Kaisha v. Court of Appeals and NSR Rubber Corp.*, G.R. 120900 promulgated 20 July 2000.

⁸ 215 SCRA 326 (1992)

⁹ *ESSO Standard Eastern, Inc. v. Court of Appeals*, 116 SCRA 336.

manufacturer against substitution and sale of an inferior and different as his product¹⁰. This Bureau finds that the Respondent-Applicant's trademark serves this function.

WHEREFORE, premises considered the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-013076 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 24 July 2013.



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



¹⁰ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 November 1999, Citing Etepha v. Director of Patents, 16 SCRA 495.