



SYNGENTA PARTICIPATIONS AG,
Opposer,

-versus-

HQ AGRICARE TRADING,
Respondent-Applicant.

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} **IPC No. 14-2011-00030**
}
} Opposition to:
} Appln. Serial No. 4-2009-007066
} Date Filed: 16 July 2009
} TM: "AGRIMAX"
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}
}
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2013 - 60 dated April 11, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 11, 2013.

For the Director:

edwin a. dating
ATTY. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



SYNGENTA PARTICIPATIONS AG,
Opposer,

IPC No. 14-2011-00030
Case Filed: 24 January 2011

-versus-

Opposition to:
Appln. Serial No.: 4-2009-007066
Date Filed: 16 July 2009

HQ AGRICARE TRADING,
Respondent-Applicant.

TM: "AGRIMAX"

x-----x

Decision No. 2013- 60

DECISION

SYNGENTA PARTICIPATIONS AG ("Opposer")¹ filed on 24 January 2011 a Verified Notice of Opposition to Trademark Application Serial No. 4-2009-007066. The application, filed by HQ AGRICARE TRADING ("Respondent-Applicant")², covers the mark "AGRIMAX" for use on "agrochemical products namely pesticides, insecticides, herbicides and molluscicides" under Class 5 of the International Classification of Goods and Services.³

The Opposer alleges, among other things the following:

1. The trademark AGRIMAX being applied for by Respondent-Applicant is confusingly similar to Opposer's trademark AGRI-MEK, as to be likely, when applied to or used in connection with the goods of Respondent-Applicant, to cause confusion, mistake and deception on the part of the purchasing public.
2. The registration of the trademark AGRIMAX in the name of Respondent-Applicant will violate Section 123.1, subparagraph (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, to wit:

"Sec. 123. Registrability. – 123.1 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:

¹ A corporation duly organized and existing under and by virtue of the laws of Switzerland with business address at Schwarzwaldallee 215, 4058 Basel, Switzerland.

² A corporation organized and existing under and by virtue of the laws of the Philippines with office address at Km. 12, Shilan, La Trinidad, Benguet.

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.

- (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;" [Underscoring supplied]

The Opposer's evidence consists of the following:

1. Exhibit "A" – Copy of the Certificate of Registration No. 55677 for trademark AGRI-MEK issued by the Intellectual Property Office of the Philippines;
2. Exhibit "B" – Certified true copy of Canadian Trademark Registration No. TMA 464,527 for the mark AGRI-MEK;
3. Exhibit "C" – Certified true copy of New Zealand's Trademark Registration No. 258909 for the mark AGRI-MEK;
4. Exhibit "D" – Certified true copy of U.S. Trademark Registration No. 1,513,325 for the mark AGRI-MEK;
5. Exhibit "E" – List of Registered Agricultural Pesticide Products as of December 31, 2007 downloaded from the official website of the Fertilizer and Pesticide Authority (FPA), www.fpa.da.gov.ph;
6. Exhibit "F" – Status report from the FPA dated November 11, 2010 showing that the FPA registration for AGRI-MEK products is valid until November 11, 2013;
7. Exhibit "G" to "G-1" – Advertising materials for products bearing the mark AGRI-MEK;
8. Exhibit "H" to "H-4" – Product packaging of goods bearing the mark AGRI-MEK;
9. Exhibit "I" – Record showing sales to Stanfilco, a plantation customer, in 1999 of products bearing the mark AGRI-MEK;
10. Exhibit "J" – Invoice showing sale of products bearing the mark AGRI-MEK;
11. Exhibit "K" to "K-2" – Duly authenticated Board Secretary's Certificate authorizing Mr. Mike Dammann to represent the Opposer in the instant case;
12. Exhibit "L" to "L-5" – Legalized Affidavit-Testimony of Mr. Mike Dammann;
13. Exhibit "M" – Syngenta AG's Annual Report for the year 2009; and
14. Exhibit "N" to "O" – Syngenta AG's company brochures.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant which was duly received on 28 April 2011. However, the Respondent-Applicant did not file the required Verified Answer. Hence, the instant opposition is considered submitted for Decision based on the evidence and opposition filed by the Opposer.

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

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

In this regard, Section 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 is nearly resembles such a mark as to be likely to deceive or cause confusion.

The records show that at the time Respondent-Applicant filed its trademark application on 16 July 2009, the Opposer has already an existing registration issued by the Bureau of Trademarks and Technology Transfer, now the Intellectual Property Office of the Philippines on 23 July 1993 under Reg. No. 55677 for insecticides Class 5 of the International of Goods. The goods covered by the said registration are similar and/or closely related to the goods indicated by the Respondent-Applicant in its trademark application particularly Class 5.

The competing marks are reproduced for comparison and scrutiny:

AGRI - MEK

AgriMAX

Opposer's Mark

Respondent-Applicant's Mark

The first two (2) syllables of the competing marks ("AGRI") are exactly the same. While "AGRI" is a prefix that is indicative of the nature of the goods – "agriculture" or "agribusiness", the Opposer's mark in its entirety is still very distinctive. In this regard, the only difference between the marks is with respect to last a syllable which is "MEK" for the Opposer and "MAX" for the Respondent-Applicant. The letter "M" is an imposing feature which gives the Respondent-Applicant's mark a visual character that makes it looks similar to the Opposer's. Also, when pronounced it produces sound that is similar to the Opposer's.

Because the Respondent-Applicant's mark is used or will be used on goods that are similar to the Opposer, it is likely that the consumers will have the impression that these goods or products originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of the goods but on the origin thereof as held by the Supreme Court, to wit:⁵

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. 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

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

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


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 and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁶

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

WHEREFORE, premises considered the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2009-007066 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate actions.

SO ORDERED.

Taguig City, 11 April 2013.


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

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⁶ American Wire and Cable Company v. Director of Patents, G.R. No. L-26557, 18 Feb. 1970.