



**SYNGENTA PARTICIPATIONS AG,**  
Opposer,

-versus-

**LEADS AGRICULTURAL PRODUCTS  
CORPORATION,**  
Respondent-Applicant.

X-----X

**IPC No. 14-2012-00047**  
Opposition to:  
Appln. Serial No. 4-2011-007647  
Date Filed: 30 June 2011  
TM: "ARMOR 70 WP"

### NOTICE OF DECISION

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**RENATO JOHN VASQUEZ, JR.**


Counsel for Respondent-Applicant  
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Mandaluyong City

**GREETINGS:**

Please be informed that Decision No. 2013 - 45 dated March 01, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, March 01, 2013.

For the Director:

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



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### DECISION

SYNGENTA PARTICIPATIONS AG, ("Opposer")<sup>1</sup> filed on 12 March 2012 an opposition to Trademark Application Serial No. 4-2011-007647. The application filed by LEADS AGRICULTURAL PRODUCTS CORP., ("Respondent-Applicant")<sup>2</sup> covers the mark "ARMOR 70 WP" for use on "Fungicide Basic 050151" under Class 5 of the International Classification of Goods or Services.<sup>3</sup>

The Opposer alleges among other things, the following:

- "1. The trademark ARMOR 70 WP being applied for by Respondent-Applicant is confusingly similar to Opposer's trademark ARMURE 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 ARMOR 70 WP in the name of Respondent-Applicant will violate Sec. 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:

- (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;"

1 Is 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 Is a corporation duly organized and existing under and by virtue of the laws of the Philippine with office address at Unit 1208 Paragon Plaza, EDSA corner Reliance Street, 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.

Republic of the Philippines

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- "3. The registration of the trademark ARMOR 70 WP in the name of Respondent-Applicant is contrary to other provisions of the Intellectual Property Code of the Philippines.

The Opposer's evidence consists of the following:

1. Exhibit "A" – Certificate of Registration No. 4-2001-004466 for trademark ARMURE issued by the Intellectual Property Office of the Philippines;
2. Exhibit "B" – Opposer's worldwide trademark portfolio for the marks ARMURE and ARMURE in combination with other word(s) and/or device(s);
3. Exhibit "C" – Certificate of Product Registration No. 011-325-0951 issued on September 18, 2000 by the Food and Pesticide Authority (FPA);
4. Exhibit "D" – Status Report from the FPA showing the valid registration of ARMURE 300 EC;
5. Exhibit "E" – Invoice showing sales of products bearing the mark ARMURE;
6. Exhibit "F" – Samples of advertising materials for products bearing the mark ARMURE;
7. Exhibit "G" – Duly notarized and legalized Corporate Secretary's Certificate authorizing Mr. Mike Dammann to represent the opposer in the instant case;
8. Exhibit "H" – Duly notarized and legalized Affidavit-Testimony of Mr. Mike Dammann; and
9. Exhibit "I" – Syngenta AG's Full Year Results 2010.

This Bureau issued a Notice to Answer and served upon the Respondent-Applicant a copy thereof on 23 March 2012. The Respondent-Applicant filed on 02 May 2012 a Motion for Extension to File Verified Answer and subsequently, on 08 May 2012, its Verified Answer. The Hearing Officer issued on 12 July 2012 Order No. 2012-950, declaring the Respondent-Applicant in default because both the Motion for Extension and the Answer were filed beyond the reglementary period of thirty (30) days from receipt of the Notice to Answer. Seeking relief from the Order, the Respondent-Applicant filed on 25 July 2012 a Motion to Lift Order of Default. There being no merit to the motion, the Hearing Officer issued on 09 October 2012 an order denying the motion.

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 of his product<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 it nearly resembles such, mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application on 30 June 2011, the Opposer already has an existing trademark Registration No. 4-2001-004466 issued on 20 November 2005 for the mark "ARMURE" for use on "preparations for destroying vermin, fungicides, herbicides" under Class 5 of the International Classification of goods and services. The goods are similar and/or closely related to the goods indicated in the Respondent-Applicant's application.

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

**ARMURE**

Opposer's mark

**ARMOR 70 WP**

Respondent-Applicant's mark

This Bureau noticed that in its application, the Respondent-Applicant disclaimed the terms "70" and "WP". But even if these terms were not disclaimed, the marks are still confusingly similar. The word "ARMOR" practically looks and sounds like the Opposer's mark. The difference between the spelling is of no moment. The changes did little in conferring upon the Respondent-Applicant's mark a character that would make it clearly distinct from the Opposer's. In this regard, 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 ingenuous 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 other.<sup>5</sup> Colorable imitation does not mean such similitude 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 others mark or tradename in their over-all presentation or in their essential, substantive and distinctive parts as would likely to

<sup>4</sup> Pribhdas J. Mirpuri versus Court of Appeals, G.R. No. 115508, 19 November 1999.

<sup>5</sup> Societe Des Produits Nestle S.A. versus Court of Appeals G.R. No. 1,000098, 29 December 1995.

mislead or confuse persons in the ordinary course of purchasing genuine article<sup>6</sup>.

It is stressed that the determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark, patent and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.<sup>7</sup> Because the Respondent-Applicant's mark will be used on goods that are similar and/or closely related to the Opposer, confusion is likely. In this regard trademark are designed not only for the consumption of the eyes, but also to appeal to the other senses, particularly, the faculty of hearing. Thus, when one talks about the Opposer's trademark or conveys information thereon, what reverberates is the sound made in pronouncing it. The same sound produced by ARMURE is practically replicated when one pronounces the Respondent-Applicant's mark. The likelihood of confusion would subsist not only on the purchaser's perception of goods but also on the origins thereof as held by the Supreme Court:

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 produce 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.<sup>8</sup>

It is inconceivable for the Respondent-Applicant to have come up with the mark ARMOR without having been inspired by or motivated by an intention to imitate the mark ARMURE. It is highly improbable for another person to come up with an identical or nearly identical mark for use on the same or related goods purely by 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 are 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.<sup>9</sup>


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

6 Emerald Garment Manufacturing Corp. versus Court of Appeals, G.R. No. 100098, 29 December 1995.

7 See American Wire and Cable Co. versus Director of Patents et. al (31 SCRA 544) G.R. No. L-26557, 18 February 1970.

8 Converse Rubber Corporation versus Universal Rubber Products, Inc., et al, G.R. No. L-27906, 08 January 1987.

9 See American Wire and Cable Co. versus Director of Patents et. al., (31 SCRA 544) G.R. No. L-26557, 18 February 1970.



**WHEREFORE**, premises considered, the opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-007647, be returned together with a copy of this Decision, to the Bureau of Trademarks (BOT) for information and appropriate action.

**SO ORDERED.**

Taguig City, 01 March 2013.



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