



TEA VENTURES CO.,
Opposer,

-versus-

REDMIX CORP.,
Respondent-Applicant.

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} IPC No. 14-2011-00516
} Opposition to:
} Appln. Serial No. 4-2011-009495
} Date Filed: 11 Aug. 2011
} Trademark: "TEAZER"
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}
}
}

NOTICE OF DECISION

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REDMIX CORP.,
Respondent-Applicant
550 Quintin Paredes St.,
Brgy. 289, Zone 027, Dist. III
Binondo, Manila

GREETINGS:

Please be informed that Decision No. 2012 – 165 dated September 05, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 05, 2012.

For the Director:

Atty. PAUST U. SAPAK
Hearing Officer
Bureau of Legal Affairs

CERTIFIED TRUE COPY

MARILYN F. RETUTAL



TEA VENTURES CO., INC.,
Opposer,

IPC No. 14-2011-00516
Case filed:

-versus-

Opposition to:
Appln. No.: 4-2011-009495
(Filing Date: 11 Aug. 2011)
TM : "TEAZER"

REDMIX CORP.,
Respondent-Applicant.

Decision No. 2012- 165

X-----X

DECISION

TEA VENTURES CO., INC. ("Opposer")¹ filed on 16 January 2012 an opposition to Trademark Application Serial No. 4-2011-009495. The application, filed by REDMIX CORP. ("Respondent-Applicant"),² covers the mark "TEAZER" for use on "restaurant" under Class 43 of the International Classification of goods³.

The Opposer anchors its opposition on the ground that the registration of the mark TEAZER in favor of the Respondent-Applicant is proscribed under Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Code of the Philippines ("IP Code"). It submitted evidence consisting of the original Power of Attorney it issued to its counsel of record; certified copies of its Declaration of Actual Use in relation to Trademark Reg. No. 4-1999-002063, Cert. of Reg. No. 4-1999-002063 for the mark "TEAZERS", Trademark Application Serial No. 4-2011-500407 for "TEAZERS LOGO", Notice of Allowance and Publication of Application No. 4-2011-500407; and Opposer's promotional materials nationwide and Opposer's corporate profiles.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 31 January 2012. However, Respondent-Applicant did not file an Answer.

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 of 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 manufacture against and sale of an inferior and different

¹ A corporation duly organized and existing under Philippine laws, with principal address at 2286 Pasong Tamo Extension, Makati City

² With address at 550 Quintin Paredes St., Brgy. 289 Zone 027, Dist., III, Binondo, Manila, 1006.

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.

⁴ MarkedAs AnnexesA toK.

on “iced tea beverages or tea-based beverages including concentrates, ready-to-drink & powders” and “fruit juices including concentrates, ready-to-drink & powders” under classes 30 and 32, respectively. While the Respondent-Applicant’s applied mark is for use on services (restaurant) under class 43, such services may be considered closely related to the goods covered by the Opposer’s trademark application. In *ESSO Standard Eastern, Inc. v. Court of Appeals, et. al.*⁵, the Supreme Court held:

“Goods are related when they belong to the same class or have the same attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores. x x x.”

Obviously, the Respondent-Applicant’s services cannot have the same attributes or essential characteristics as those of the Opposer’s good with respect to form, composition, texture or quality. However, the Opposer’s goods and the Respondent-Applicant’s services find commonality on a certain purpose, quenching one’s thirst. One provides the quenching agent (drinks) while the other provides the place where the drinks are available. Moreover, the subject marks, as shown below, are practically identical to each other such that confusion or even deception is likely to occur:



Opposer's Mark

TEAZER

Respondent-Applicant's Mark

The differences in font styles and color, as well as the presence of the letter “S” and a “leaf” in the Opposer’s registered mark are of no consequence. The marks look and sound alike. 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 purchaser as to cause him to purchase the one supposing it to be the other.⁶

The Opposer’s mark suggests the goods on which it is used “tea-based beverages”. However, the addition of the other letters “ZERS” rendered it a highly distinctive mark.

⁵ 201 Phil 803.

⁶ See *Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 112012, 4 April 2001, 356 SCRA 207, 217.*

Consumers therefore are likely to assume that the Opposer has expanded its business or has in any way sponsored the activities of or is connected to or associated with the Respondent-Applicant. 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:⁷

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

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 of 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 manufacture against and sale of an inferior and different article of his products.⁸

WHEREFORE, premises considered, the opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-009495 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 05 September 2012.


NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

⁷ *Converse Rubber Corporation v. Universal Rubber Products Inc., et.al.* G.R. No. L-27906, 08 Jan. 1987.

⁸ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114509, 19 Nov. 1999.