



THE SUNRIDER CORPORATION,  
Opposer,

IPC No. 14-2011-00446  
Opposition to:  
Appln. Serial No. 4-2011-007246  
Date filed: 22 June 2011  
TM: "SONERGY AND DEVICE"

-versus-

ANTHONY YAN,  
Respondent –Applicant.

x-----x

**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2014 - 45 dated February 18, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 18, 2014.

For the Director:

*Edwin A. Dating*  
**Atty. EDWIN DANILO A. DATING**  
Director III  
Bureau of Legal Affairs



**THE SUNRIDER CORPORATION,**  
*Opposer,*

-versus-

**ANTHONY YAN,**  
*Respondent-Applicant.*

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**IPC No. 14-2011-00446**  
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Date Filed: 22 June 2011

**TM: SONERGY AND DEVICE**

Decision No. 2014- 45

## DECISION

The SUNRIDER CORP. ("Opposer")<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2011-007246. The application, filed by ANTHONY YAN ("Respondent-Applicant")<sup>2</sup>, covers the mark SONERGY & DEVICE for use on "food supplement" under Class 5 of the International Classification of Goods and Services<sup>3</sup>.

The Opposer alleges that the registration of the mark SONERGY & DEVICE in favor of the Respondent-Applicant will violate and contravene the provisions of Section 123.1, pars. (d) to (g), of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer, SONERGY & DEVICE is confusingly similar to its registered trademark SUNERGY as to be likely to cause confusion or mistake, or deceive the purchaser's thereof as to the origin of the goods. To support its opposition, the Opposer submitted as evidence the following:

1. Exhibit "A" – certified copy of the Special Power of Attorney executed by the Opposer in favor of the law firm Hechanova Bugay & Vilchez ;
2. Exhibit "B" – Affidavit-Direct Testimony of CHRISSIE ANN L. BARREDO;
3. Exhibits "C" to "C-41" – an overview and profile of Opposer's can be found on its official website at <http://www.sunrider.com> printouts of the same;
4. Exhibit "D" – copy of Trademark Application Serial No. 4-2011-007246;
5. Exhibits "E" to "E-1" – documents obtained from the website <http://www.ipophil.gov.ph>;
6. Exhibits "F" to "F-29" – detailed information on the registration of the mark SUNERGY in the European Union;
7. Exhibits "G" to "G-691" – duly authenticated Affidavit-Direct Testimony of Oi-Lin Chen and sub-markings wherein she identifies and introduces as evidence a list of active registrations and pending applications if the trademark SUNERGY worldwide; and
8. Exhibits "H" to "H-24" – Duly authenticated Affidavit-Direct Testimony of Mr. Palacios and photographs and samples of packaging materials, brochures and newsletters, featuring Opposer's SUNERGY line products.

<sup>1</sup> Corporation organized and existing under the laws of the State of Utah, USA, with principal place of business at 1625 Abalone Avenue, Torrance 90501 California, U.S.A.

<sup>2</sup> With given address at 1029 Roman Street, Binondo, Manila.

<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.

The Respondent-Applicant filed his Verified Answer on 03 April 2012 admitting some of the allegations and denied all the material allegations of the opposition and further alleging that he filed in good faith Trademark Application Serial No. 4-2011-007246 on behalf of its H & CH Laboratories Co., Ltd., purportedly, a company based in Los Angeles, United States of America. He also argues that his trademark SONERGY AND DEVICE is neither identical nor confusingly similar to Opposer's mark SUNERGY.

To defend his trademark application, the Respondent-Applicant submitted in evidence the following:

1. Exhibit "1" – certified true copy of Application SN 4-2011-007246 filed on 22 June 2011 for the registration of the mark "SONERGY AND DEVICE" **SONERGY** for use on food supplement falling under Class 5;
2. Exhibit "2" – written authorization given by H & CH Laboratories Co., Ltd. To Respondent-Applicant Anthony Yan to register the trademark **SONERGY** in his name;
3. Exhibit "3" – printout of trademark search results with this office dated 03 June 2011;
4. Exhibit "4" – certified true copy of the Notice of Allowance bearing mailing date of 22 August 2011;
5. Exhibit "5" – printout of Respondent-Applicant's mark **SONERGY** as published in the e-Gazette last 05 September 2011;
6. Exhibits "6" to "6-d" – printout from Sonergy's website [www.sonergy.com.cn](http://www.sonergy.com.cn);
7. Exhibits "7" to "7-q" – printouts from Sonergy's website ([www.sonergy.com.cn](http://www.sonergy.com.cn)), product brochures and labels showing various **SONERGY** products;
8. Exhibit "8" – printout from Marcaria.com Trademark Search in the United States of Registration No. 1192966 issued on 06 April 1982 for the trademark **SONERGY** for use on vitamins, minerals and dietary food supplements;
9. Exhibit "9" – printout from Marcaria.com Trademark Search in the United States of Registration No. 1683566 issued on 21 April 1992 for the trademark **SONERGY** for use on vitamins, minerals and dietary food supplements;
10. Exhibit "10" – printout from Marcaria.com Trademark Search in the United States of Application SN 77398862 filed on 15 February 2008 for the registration of the trademark **SONERGY** for use on dietary and nutritional supplements, dietary drink mix for use as a meal replacement and dietary supplement drink mixes; mixed vitamin preparations; nutraceuticals for use as dietary supplement; nutritional supplements in lotion form sold as a component of nutritional skin care products; powered nutritional supplement drink mix; vitamin and mineral supplements;
11. Exhibit "11" – printout from Marcaria.com Trademark Search in the United States of Application SN 85257812 filed on 04 March 2011 for the registration of the mark **SONERGY** for use on vitamins and published for opposition on 19 July 2011; and
12. Exhibit "12" – duly notarized affidavit of Respondent-Applicant ANTHONY YAN.

Should the Respondent-Applicant be allowed to register the mark SONERGY in its favor?

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 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 nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed his trademark application on 22 June 2011, the Opposer already has existing registrations for the mark SUNERGY both issued on 14 December 2003, particularly:

1. Reg. No. 4-1997-122926 covering *"pharmaceutical, veterinary and sanitary preparations, namely: cellulite substances, in particular ointments, gel and lotions; dietetic substances for medical use, particularly made using vegetal base material, particularly basing on herbs, food for babies; plasters, materials for dressings; material for stopping teeth and dental wax; disinfectants, preparations for destroying vermin; fungicides; herbicides; deodorants (not for personal use); vitamin-preparations; dietetic food, nutritional preparations and additives for medical purposes, herb concentrates (medicated), dietetic food on herbal base for medical purposes particularly being tablets; dietetic preparations and nutritional concentrates, nutritional preparations and additives for foodstuff made using vegetal base substances for medical purposes, in particular containing ballasts and such with high proportion of fibers, musli-bars; dietetic beverages and syrups for medical purposes; in particular made using vegetal base material or herbs; nutritional syrups, mouth drops and lozenges for medical purposes; substances for the care of teeth, mouth and breath"* under Class 5, and
2. Reg. No. 4-1997-122927 for use on *"fruit and vegetables juices and drinks; soft drinks and preparation of making herbal, soft drinks; bottled water and spring water"* under Class 32.

But are the competing marks, as shown below, confusingly similare?

The image shows the word "SUNERGY" in a bold, blocky, sans-serif font. The letters are closely spaced and have a slightly irregular, hand-drawn appearance.

*Opposer's Mark*


The image shows the word "SQNERGY" in a bold, italicized, sans-serif font. The letters are more stylized and have a smoother appearance compared to the "SUNERGY" mark.

*Respondent-Applicant's Mark*

Jurisprudence says that a practical approach to the problem of similarity or dissimilarity is to go into the whole of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of the prospective buyer. The trademark complained should be compared and contrasted with the purchaser's memory of the trademark said to be infringed. Some factors such as sound; appearance; form, style, shape, size or format; color, idea connoted by the mark; the meaning, spelling and pronunciation of the words used; and the setting in which the words used, may be considered for indeed, trademark infringement is a form of unfair competition<sup>5</sup>.

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

<sup>5</sup> *Clarke v. Manila Candy Co.*, 36 Phil 100, 106.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a checkmark-like flourish.



The competing marks are almost identical. These marks differ only as regards their respective second letters, which is of no moment. The first syllable in the mark applied for registration by the Respondent-Applicant ("SON") sounds exactly the same as the first syllable in the Opposer's mark ("SON") ~~in this regard~~, 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<sup>6</sup>.

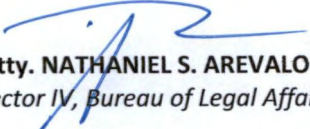
Because the competing marks are confusingly similar, consumers may also likely assume, that the Respondent-Applicant's mark is just a variation of or related to the Opposer's and/or the goods or services originate or provided by one party alone or the parties themselves are connected or associated with one another while 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>7</sup>.

Thus, this Bureau finds and concludes that the registration of the mark SONERGY in favor of the Respondent-Applicant 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. 4-2011-007246 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 18 February 2014.

  
Atty. NATHANIEL S. AREVALO  
Director IV, Bureau of Legal Affairs

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

<sup>7</sup> *Converse Rubber Corp. v. Universal Rubber Products, Inc. et.al.* G.R. No. L-27906, 08 Jan. 1987.