



DANJAQ, LLC.,
Opposer,

-versus-

SUYEN CORPORATION,
Respondent- Applicant.

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}
} IPC No. 14-2010-00292
} Opposition to:
} Appln. Serial No. 4-2010-001717
} Date Filed: 16 February 2010
} TM: "AGENT BOND"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 245 dated October 10, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 10, 2014.

For the Director:

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



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SUYEN CORPORATION,
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IPC No. 14-2010-00292

Opposition to:
Serial No. 4-2010-001717
Date Filed: 16 February 2010
Trademark: **"AGENT BOND"**

Decision No. 2014- 245

DECISION

Danjaq LLC¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2010-001717. The contested application, filed by Suyen Corporation² ("Respondent-Applicant"), covers the mark "AGENT BOND" for use on "*hair refresher, hair gel, hair lotion, hair treatment, hair shampoo and hair conditioner*" under Class 03 of the International Classification of Goods³.

The Opposer maintains that it is the legal owner of all registered and unregistered rights in the trademarks "JAMES BOND" and "JAMES BOND 007", which it first adopted in 1962 to market and produce various merchandise and films nationwide. It claims to have used its marks in connection with the production and promotion of the twenty-two (22) films which transformed the name of fictional James Bond to a trademark of allegedly well-known status and worldwide renown. It avers that the James Bond character is also known in the film and referred to in popular culture simply as Agent Bond.

According to the Opposer, the James Bond series of films is the most successful motion picture franchise in history and since 1962, the sales of goods and services, utilizing the "JAMES BOND" marks, total well over \$5 Billion nationwide. It asserts that the Internet Movie Database website listed twelve (12) of its 22 films in the "All-Time Non-USA Box Office" receipts, even without adjustment for inflation, which list includes only movies that have grossed \$100 Million at the box office during their theatrical runs. It also states that it engages in extensive advertising campaign in connection to the release of the film. It further asseverates that the fi under and has been so popular in the country that the local movie industry came up with its own fictional character, "Agent X-44", starred by Tony Ferrer. It alleges to

¹ A limited liability company organized and existing under and by virtue of the laws of State of Delaware, with address at 2401 Colorado Avenue, Suite 330, Santa Monica, California 90404, United States of America.

² A corporation duly organized and existing under by virtue of the laws of the Republic of the Philippines with address at 2214 Tolentino Street, Pasay 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.

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have sold products bearing the marks "JAMES BOND" and "JAMES GIRL 007" in the Philippines through its distributors and various stores and media.

In support of its Opposition, the Opposer submitted the following as evidence:

1. sworn and legalized affidavit of Opposer's witness, David S. Pope, with annexes;
2. Great Britain Registration B908164 for "JAMES BOND SPECIAL AGENT 007";
3. European Community Trademark Registration 251918 for "JAMES BOND" issued 01 October 1998;
4. Japanese Registration 4321666 for "JAMES BOND" issued 08 October 1999, with English translation;
5. Chinese Registration 00829889 for "JAMES BOND" issued 16 December 1998, with English translation;
6. South Korean Registration 423729 for "JAMES BOND" issued 29 September 1998, with English translation;
7. printout from webpages of www.imdb.com;
8. printout from IPO website of Registration Nos. 4-2003-07592 and 4-2007-012634; and
9. Japanese Registration 4310027 for "BOND GIRL" issued 27 August 1989.⁴

On the other hand, the Respondent-Applicant contends that it has long been in the business of manufacturing, marketing, advertising, distributing and selling clothing apparel in the Philippines under its trademark "BENCH" and eventually expanded its business to include, among others, hair care and other lifestyle products, cosmetic, fragrances and body care products. It claims to have successfully entered the international market by opening a network of stores and outlets marketing and selling "BENCH" and other Suyen-manufactured and/or marketed products. It proclaims to have also engaged, with its sister companies BCut, Inc. and Mother Unit Corporation, in the service industry through its beauty salon, "FIX BENCH SALON", and internet café, "BE CONNECTED", among others.

The Respondent-Applicant adds that even prior to the opening of its salons, it has manufactured, advertised, distributed and sold hair products, one of which is a styling gum sub-branded as "AGENT BOND", which it has used since 08 March 2005. It claims to have extensively used the said mark as an integral part of its business and advertising and promotional strategies. It explains that the hair styling product the mark refers is a styling gum applied to the hair in order to hold its style, similar to hair gels except that they differ in consistency and texture. It insists that "AGENT BOND" is a fanciful coined name associated with styling gum; a creative but non-descriptive way of making reference to the function of the product. It clarifies that

⁴ Marked as Exhibits "A" to "K", inclusive.

the word "AGENT" is used to convey to purchasers that the product is a device while the word "BOND" related to the function of the device.

The evidence of the Respondent-Applicant consists of the following:

1. printed copy of the webpage from http://www.imbd.com/help/show_leaf?inforsource;
2. letter dated 20 December 2010; and
3. affidavit of its Group Brand Manager, Mr. Dale Gerald G. Dela Cruz with annexes.⁵

Pursuant to Office Order No. 154, s. 2010, the Hearing Officer referred the case to mediation. The parties, however, refused to mediate. Accordingly, the Hearing Officer conducted a preliminary conference and the same was terminated on 23 September 2011. The parties were directed to submit their respective position papers after which, the case is deemed submitted for decision.

The issue to be resolved is whether the Respondent-Applicant's mark "AGENT BOND" should be allowed.

Section 123.1 (d) of the IP Code provides that:

"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; xxx."

The records show that at the time the Respondent-Applicant filed its trademark application "AGENT BOND" on 16 February 2010, the Opposer already has an existing registrations for "JAMES BOND" and "BOND GIRL 007" issued respectively on 22 October 2007 and 12 January 2009 under Registration Nos. 44-2003-007592 and 4-2007-012634.

But are the marks, as shown hereafter, confusingly similar?

BOND GIRL 007

JAMES BOND

Opposer's marks

⁵ Marked as Exhibits "1" to "16", inclusive.

AGENT BOND

Respondent-Applicant's mark

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 a prospective buyer. The trademark complained of should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. Some such factors as "sound; appearance; form, style, shape, size or format; color; ideas connoted by marks; the meaning, spelling, and pronunciation, of words used; and the setting in which the words appear" may be considered.⁶ Thus, confusion is likely between marks only if their over-all presentation, as to sound, appearance, or meaning, would make it possible for the consumers to believe that the goods or products, to which the marks are attached, emanate from the same source or are connected or associated with each other.

The competing marks are similar in the sense that they all appropriate the word "BOND". The said word is already commonly used in many other different trademark registrations such as "MIGHTY BOND". Thus, what will determine whether a mark is distinctive are the other words and/or logo that accompany the word "BOND". In this case, the Respondent-Applicant's mark places the word "AGENT" before "BOND" thus giving it an impression of a connection with the fictional character "JAMES BOND" in the Opposer's movies, who is also referred to therein as "Agent 007" and/or "Agent Bond". Noteworthy, aside from the leading actor taking the role of an intelligence officer, the James Bond franchise movies' staple are beautiful women. It therefore is almost impossible that a purchaser of the Respondent-Applicant's "AGENT BOND" hair products will not be reminded of the Opposer's "JAMES BOND" character and/or movies.

Succinctly, the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. 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 the belief that there is some connection

⁶ Etepha A.G. vs. Director of Patents, G.R. No. L-20635, 31 March 1966.

between the plaintiff and defendant which, in fact, does not exist."⁷ As in this case where the connotation the competing marks give is identical, it is likely that the purchasers of Respondent-Applicant's products will be confused, mistaken or be led to believe that these are in any way connected with the Opposer.

Finally, it is emphasized that 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 manufacturer against substitution and sale of an inferior and different article as his product.⁸

Accordingly, this Bureau finds and concludes 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. 4-2010-001717 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 October 2014.


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

⁷ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 8 August 2010.

⁸ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.