



KENSONIC, INC.,
Opposer,

-versus-

UNI-LINE MULTI
RESOURCES, INC.,
Respondent-Applicant.

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}
} IPC No. 14-2009-00065
} Opposition to:
} Application No.4-2007-009013
} Date filed: August 21, 2007
} TM: "SAKURA & DEVICE"
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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 26 dated March 10, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 10, 2015.

For the Director:


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



KENSONIC, INC.,
Opposer,

- versus -

UNI-LINE MULTI RESOURCES, INC.,
Respondent-Applicant.

x ----- x

IPC No. 14-2009-00065
Opposition to:

Appln. No. 4-2007-009013
Date Filed: 21 August 2007
Trademark: "SAKURA & DEVICE"

Decision No. 2015 - 26

DECISION

KENSONIC, INC., ("Opposer")¹ filed a verified opposition to Trademark Application Serial No. 4-2007-009013. The application, filed by UNI-LINE MULTI RESOURCES, INC., ("Respondent-Applicant")², covers the mark "SAKURA & DEVICE" for use on goods under class 7³ namely: washing machines, high pressure washers, vacuum cleaners, floor polishers, blender, electric mixer, electrical juicer, electric can hardware, coffee grinders, dishwashers, electric glue gun, electric knives, sewing machines, and spin dryers.

The Opposer alleges the following:

"2. Opposer, KENSONIC, INC. is the one who first adopted and used the trademarks 'SAKURA', 'SAKURA & FLOWER DESIGN' and 'SAKURA & DEVICE' in commerce in the Philippines under the principle of priority rule of first user.

"3. Since 1994, KENSONIC, INC. has been using, introducing and distributing in the Philippines amplifier, speaker, cassette, cassette disk, video cassette disk, car stereo, television, digital video disk, mini component, tape deck, compact disk charger, VHS and tape rewinder under Class 9 of the International Classification of Goods bearing the trademarks 'SAKURA', 'SAKURA & FLOWER DESIGN' and 'SAKURA & DEVICE'. Several business establishments engaged in the sale and distribution of the aforementioned products bearing the trademarks 'SAKURA', 'SAKURA & FLOWER DESIGN' and 'SAKURA & DEVICE' are the exclusive buyers or dealers of KENSONIC, INC.

"4. In addition, KENSONIC, INC. has nationwide authorized dealers of 'SAKURA', 'SAKURA & FLOWER DESIGN' and 'SAKURA & DEVICE' and has already maintained and established a name and goodwill in distributing 'SAKURA' products in the country.

"5. On 29 November 2005, this Honorable Office rendered a Decision on IPC No. 14-2004-00160. x x x

"6. In the said decision, it was ruled that KENSONIC, INC. first used and adopted the trademark 'SAKURA' in commerce in the Philippines since 1994 used on amplifier, speaker, cassette, cassette disk, video cassette disk, car stereo, television, digital video disk, mini component, tape deck, compact disk charger, VHS and tape rewinder under Class 9 of the

¹ A corporation existing under and by virtue of the laws of the Philippines, with office address at Lot 3, T.S. Sarino Subdivision, Real Street, Pulang Lupa, Las Pinas City.

² With registered address at Unit MO3 Prince Jun Condominium, 42 Timog Avenue, Quezon City.

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

International Classification of Goods. Consequently, the said decision attained finality on January 19, 2006 and the Decision was entered in the Book of Entries of Judgments on August 9, 2006.

"7. On August 7, 2008 this Honorable Office rendered a Decision in IPC No. 14-2006-00183 for cancellation of Registration No. 14-2000-003083 for the mark 'SAKURA & FLOWER DESIGN' filed by herein opposer against Uni-Line Multi-Resources, Inc. wherein the said registration was ordered cancelled.

"8. On August 11, 2008 this Honorable Office rendered a Decision in IPC No. 14-2006-00139 for cancellation of Registration No. 14-2002-004572 for the mark 'SAKURA' filed by herein opposer against Uni-Line Multi-Resources Inc. (Phils.) where the said registration was ordered cancelled.

"9. On August 11, 2008 this Honorable Office rendered a Decision in IPC No. 14-2007-00177 for cancellation of Registration No. 14-2006-001055 for the mark 'SAKURA & DEVICE' filed by herein opposer against Veronica D. Teng wherein the said registration was ordered cancelled.

"10. Accordingly, KENSONIC, INC. filed this instant opposition to Application No. 42007009013 of Uni-Line Multi-Resources, Inc. (Phils.) for the trademark 'SAKURA & DEVICE' on products falling under Class 9 of the International Classification of Goods.

"11. The filing of this instant case was filed by virtue of the finality of the above-quoted Decision of this Honorable Office in IPC No. 14-2004-00160. The decision of a quasi-judicial body should not be taken lightly in view it performs adjudicatory functions such that it awards, determine the rights of parties, and their decision have the same effect as judgments of a court. Well-entrenched is the ruling that findings of facts of quasi-judicial bodies, like the decisions of this Honorable Office, are accorded with respect, even finality, if supported by substantial evidence.

"12. The findings of fact in IPC No. 14-2004-00160 are even binding and conclusive upon Supreme Court and will not normally be disturbed. Even Circular No. 1-91 of the Supreme Court recognizes the rule that findings of fact of the court, commission, board, office or agency concerned, when supported by substantial evidence, shall be final.

"13. In IPC No. 14-2004-00160, while it is true that the case was between KENSONIC, INC. and UNI-LINE MULTI RESOURCES, INC. (PHILS), the same should be binding to applicant VERONICA D. TENG. In addition to the fact that IPC No. 14-2004-00160 and this instant case involve the same class and mark 'SAKURA', the decision was rendered based on the numerous evidences presented by the respective parties.

"14. Hence, based on the quoted decision of this Honorable Office, by operation of law, justice and equity, KENSONIC, INC. has the priority right to have the trademark SAKURA registered under the principle of 'priority rule of first user'.

"15. In addition, and in support thereto, attached to this Notice of Opposition are receipts or sales invoices issued to NEPCO ELECTRONICS in Raon, Quiapo, Metro Manila; SOLID ELECTRONICS; POLAR POINT MARKETING in Dr. A. Santos Ave., Sucat Paranaque City; UNITRONIC MARKETING; almost all Electronic Stores in Metro Manila; TRIPLE VENTURE in Cebu City; and MILDRANGE MARKETING in Davao City

The Opposer's evidence consists of the following:

1. Exhibit "A" & "A-1" - Certificate of Registration of KENSONIC, INC., formerly AUDIO CROWN Enterprises and Secretary Certificate;

2. Exhibit "B" - Certified copy of Decision in IPC No. 14-2004-00160;
3. Exhibit "C" - Certified copy of Decision in IPC No. 14-2006-00183;
4. Exhibit "D" - Certified copy of Decision in IPC No. 14-2006-00139;
5. Exhibit "E" - Certified copy of Decision in IPC No. 14-2007-00177;
6. Exhibit "F"- "F-6"- Sales list of Kensoic, Inc.;
7. Exhibit "G" - SAKURA Operator's Manual;
8. Exhibit "H" - SAKURA Operating Instructions;
9. Exhibit "I" - Letter dated 24 October 1996 (in Chinese language);
10. Exhibit "J" - Declaration of Actual Use (DAU) of Kensoic, Inc.;
11. Exhibit "K" - Documents showing Kensoic, Inc.'s first use of SAKURA mark in commerce in the Philippines.

On 15 June 2009, Respondent-Applicant filed its Answer containing among others the following Affirmative and/or Special Defenses:

"5.1. The Verification and Certification of Non-Forum Shopping attached to the Notice of Opposition is fatally defective and perjurious. Thus, in paragraphs 4 and 5 thereof, Nenita K. Tsang, President of Opposer, stated:

x x x

4)That I have not commenced any other action or proceeding involving the same subject matter, issues or facts before the Supreme Court, the Court of Appeals or any other Tribunal or Administrative body or agency.

5)That to the best of my knowledge, no other action or proceeding is pending in the Supreme Court, the Court of Appeals or any other Tribunal Agency.

In its Notice of Opposition, however, Opposer refers to, and relies, among others, on IPC No. 14-2006-00183 (par. 7; Annex "C"); IPC No. 14-2006-00139 (par. 8; Annex "D"); IPC No. 14- 2006-00177 (par. 9; Annex "E") to support its opposition.

"5.2. Having been filed only on March 5, 2009, the instant opposition case is covered by the summary procedure established by Office Order No. 79, Series of 2005 which became effective on September 1, 2005.

The following Annexes to the Notice of Opposition do not comply with Office Order No. 79, particularly, Sections 7.1 and 12.1 thereof, and are therefore, inadmissible as evidence in favor of Opposer, namely:

5.2.1. Annex "A", although it is certified is merely a mere photocopy from another photocopy and therefore, inadmissible under Office Order No. 79;

5.2.2. As previously stated (par. 3.5), there are no Annexes 'F' to 'F-6'; 'G'; 'H'; and 'I' attached to the copy of the Notice of Opposition served on Respondent-Applicant.

5.2.3. Annex 'J' is a mere photocopy and therefore, inadmissible;

5.2.4. The documents covered by Annex 'K', although certified, are still mere photocopies from photocopies and therefore, are inadmissible.

"5.3. The allegations contained in paragraphs 19 to 21; and 26 to 27 of the Notice of Opposition are clearly self serving. besides, Opposer having failed to submit competent evidence to support said allegations, they remain 'pure' allegations without any probative value.

"5.4. Respondent-Applicant's Application Serial No. 4-2007-009013 does not violate Section 123.1 (d) of the IP Code.

x x x

5.4.2. Respondent-Applicant's mark 'SAKURA & DEVICE' (composed of a Five-Leaf Flower which emanates from a Circular Center with bold letters below forming the word SAKURA) is different and easy to distinguish from Opposer's mark which incidentally, Opposer has failed to submit a facsimile or label thereof). The letter font of the word 'SAKURA' in Respondent-Applicant's mark is not identical to the letter font of Opposer's SAKURA word mark. In addition, the Device which consists of a Five-Leaf Flower which emanates from a Circular Center which forms an integral part of Respondent-Applicant's composite mark is noticeably absent in Opposer's mark.

5.4.3. Of course, more important is the fact that Respondent-Applicant's SAKURA & DEVICE mark is for use on the following goods, namely: washing machines, high pressure washers, vacuum cleaners, floor polishers, blender, electric mixer, electric juicer, electric can hardware, coffee grinders, dishwashers, electric glue gun, electric knives, sewing machines, spin dryers falling under Class 7, none of which Opposer deals with and/or is included in its trademark application.

5.4.4. Moreover, Opposer cannot claim exclusive right to use and register the word mark 'SAKURA'. The word 'SAKURA' was neither created nor originated by Opposer or its President. The word 'SAKURA' is the Japanese name for ornamental cherry trees and their blossoms. The word 'SAKURA' appears in all Japanese dictionaries, as well as in most English dictionaries. x x x

5.4.5. Respondent-Applicant's goods are not similar nor related to Opposer's goods. They do not complement each other and they do not possess the same essential characteristics. The parties' goods do not move in the same channels of trade and they do not move in the same channels of trade and they are not available for sale in the same outlets or stores. Even in those instances where both goods are available under the same roof, the purchasers will not likely confuse Respondent-Applicant's goods are coming from Opposer and vice versa. Considering the nature and purposes of the various goods of the parties, the purchasers thereof will know what they want and will invariably be guided also by the respective prices thereof. If, as claimed by Opposer, its goods have acquired goodwill, it is likely that customers who are aware of such reputation will not buy identical goods dealt with by Respondent-Applicant. But with respect to goods that Opposer had never dealt before, it is not likely that customer will buy them simply because they bear the mark 'SAKURA'.

x x x

"5.5. Opposer cannot use Decision No. 2005-2 promulgated in IPC No. 14-2004-00160 as the basis or legal justification to oppose approval of Application Serial No. 4-2007-009013. x x x

"5.6. Opposer cannot rely on the other decisions enumerated in paragraphs 7 to 10 to support its opposition to Application Serial No. 4-2007-009013 of Respondent-Applicant."

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

1. Exhibit "1", "1-a"- "1-e"-Copies of Acknowledgment of Filing, Trademark Application Form, List of Goods, Drawing and Notice of Allowance of Application Serial No. 4-2007-009013;
2. Exhibit "1-f" - E-Gazette Publication print-out;
3. Exhibit "2" - Computer print-out about SAKURA dated 09 June 2009;
4. Exhibit "3" - Computer print-out of PhilTM O-Search re SAKURA trademark; and,
5. Exhibit "4" - Notarized Affidavit of Enrique Y. Co, President of Uni-Line Multi-Resources, Inc.

On 29 June 2009, Opposer filed its Reply, alleging among others that it amends several paragraphs of the Opposition to include allegations and annexes. In particular, it alleged that the findings of the Honorable Bureau in the Subject Decision cannot be disregarded in the determination of the issues in the instant Opposition proceedings. Further, Opposer submitted and attached Annexes for the benefit of the Respondent-Applicant, and further submits original copies of the receipts and invoices. The following are attached to the Reply:

1. Exhibits "F-7"- "F-22" - Original copies of receipts and invoices;
2. Exhibits "F-23"- "F-26" - Photocopies of SAKURA brochures; and,
3. Exhibits "L"- "P" - Certifications of exclusive dealers and distributors.

On the other hand, Respondent-Applicant filed its Rejoinder on 20 July 2009 stating that although the pleading is entitled "Reply", it is in effect, an amended Notice of Opposition which is no longer allowed as may be gleaned in paragraphs 3, 5, 3.10 of the said Reply. In addition, the attached annexes supposedly to be receipts or sales invoices issued to NEPCO ELECTRONICS; MARTCOM; SOLID ELECTRONICS; POLAR POINT MARKETING; UNITRONIC MARKETING: Triple Venture; and Mildrange Marketing are in the name of another entities which are different from the entities the annexes were supposed to have been issued.

In this connection, Position Papers were submitted by parties on 20 September 2012. Hence, this case is deemed submitted for decision.

Should the Respondent-Applicant be allowed to register the trademark SAKURA & DEVICE?

The Respondent-Applicant raised the issue that the Notice of Opposition contains a "Verification and Certification of Non-Forum Shopping" which is fatally defective. Accordingly, notwithstanding the pendency of IPC Case Nos. 14-2006-0183 and 24-2006-00139 between the parties when this instant case was filed, Nenita K. Tsang or Ken sonic, Inc., did not mention any pending case and its status in the Verification and Certification of Non-Forum Shopping.

The Supreme Court has ruled that technical rules of procedure should be used to promote, not frustrate, the cause of justice. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for goods and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal course.⁴

⁴ Santos v. Litton Mills Incorporated and/or Marino, G.R. No. 170646 (22 June 2011), citing Fiel v. Kris Security Systems, Inc., 448 Phil. 657, 662 (2003).

The status of pending cases which Opposer failed to state in its Verification and Non-Forum Shopping were all mentioned and discussed in the instant opposition. The Respondent-Applicant had its opportunity to ventilate its cause and defenses on the said cases. Thus, this Bureau finds it proper to relax the rigid application of the rules of procedure in order to secure the greater interest of justice.

But even if this Bureau considers the aforementioned Verification and Non-Forum Shopping, the instant opposition has no sufficient ground to stand.

In the Decision dated 11 June 2012, the Office of the Director General in Inter Partes Case (IPC) No. 14-2006-00139⁵ has found herein Opposer to be the prior user of the trademark SAKURA on goods falling under Class 9, which in that instant case, are related to the goods covered by the opposing party. It was also declared that in so far as the goods enumerated under Classes 7 and 11 of the certificate of registration for SAKURA, the presumption of validity of the same is hereupon upheld.⁶

This instant case involves the following marks for comparison:

SAKURA

Opposer's Trademark



Respondent-Applicant's Trademark

The contending marks contain the identical word SAKURA. The Respondent-Applicant's mark further contains a device of a Five-Leaf Flower which emanates from a Circular Center with bold letters below forming the word SAKURA⁷. However, the goods or products covered by each mark are different from each other. The Opposer's mark is under Class 9 and the Respondent-Applicant's mark is being used on goods under Class 7.

In one case, the Supreme Court ruled that:

"The trademark 'CANON' as used by Petitioner for its paints, chemical products toner and dyestuff,⁸ can be used by private respondent for its sandals⁹ because the products of these two parties are dissimilar."¹⁰

Further, the Supreme Court sustained the Director of Patents which allowed the junior user to use the Trademark of the senior user on the ground that the briefs manufactured by the junior user, the product for which the Trademark 'BRUTE' was sought to be registered, was unrelated and non-competing

⁵ Uni-Line Multi Resources, Inc. (Phils.), Respondent-Appellant v. Kensoic, Inc., Petitioner-Appellee, Appeal No. 14-2010-0011, Petition for Cancellation of Trademark Registration No. 4-2002-004572 for "SAKURA".

⁶ Id.

⁷ Filewrapper records.

⁸ Class 2.

⁹ Class 25.

¹⁰ Canon Kabushiki Kaisha v. Court of Appeals and NSR Rubber Corporation, G.R. No. 120900 promulgated 20 July 2000.

A handwritten signature or set of initials in blue ink, located in the bottom right corner of the page.

with the products of the senior user consisting of after shave lotion, shaving cream, deodorant, talcum powder, and toilet soap.¹¹

In another case, the Supreme Court ruled that:

"The Petroleum Products on which the petitioner therein uses the Trademark ESSO, and the product of Respondent, Cigarettes are so foreign to each other as to make it unlikely that purchasers would think that petitioner is the manufacturer of Respondent's goods."¹²

Again, this Bureau takes judicial notice of the Decision of the Office of the Director General in Appeal No. 14-2010-0011¹³, whereby the rights of herein Opposer KENSONIC, INC. was sustained in so far as goods falling under Class 9 and declaring the latter as prior user thereof. On the other hand, the rights of herein Opposer was denied in so far as goods falling under Classes 7 and 11 are concerned. Thus, the cancellation of Certificate of Registration No. 4-2002-004572. Pertinent portion of the said Decision is hereby adopted, as it provides:

"Nonetheless, there is merit to the Appellant's contention that its goods in Classes 7 and 11 are different from those of the Appellee. The Appellant's goods in Class 7 are washing machines, high pressure washers, vacuum cleaners, floor polishers, blender, electric mixer, electric juicer while those falling under Class 11 are refrigerator, air conditioners, oven toaster, turbo broiler, rice cooker, microwave oven, coffee maker, sandwich/waffle maker, electric stove, electric fan, hot and cold water dispenser, air pot, electric griller and electric hot pot.

These goods are obviously different from the Appellee's goods that includes amplifiers, DVD player, VCD player, tape dock, tuner, equalizer, mixer, digital voice recorder, video disc recorder. In this regard, the Appellee should have adduced evidence to show that it will be damaged by the continued registration of SAKURA in favor of the Appellant for goods falling under Classes 7 and 11.

The Appellee, however, failed to convince this Office that the Appellee would be damaged by the Appellant's registration of SAKURA for goods falling under Classes 7 and 11. Not only are the Appellant's goods under these classes different from the Appellee's goods. They also serve different purposes, are non-competitive, and are so unrelated that purchasers would not in any probability mistake one as the source or origin of the product of the other.

In addition, the ordinary purchaser must be thought of, as having, and credited with, at least a modicum of intelligence. It does not defy common sense to assert that a purchaser would be cognizant of the product he is buying. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation."

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;

¹¹ Faberge, Incorporated v. Intermediate Appellate Court, 215 SCRA 326 (1992).

¹² ESSO Standard Eastern, Inc. v. Court of Appeals, 116 SCRA 336.

¹³ Dated 11 June 2012, Uni-Line Multi Resources, Inc. (Phils.), Respondent-Appellant v. Kensonic, Inc., Petitioner-Appellee, Petition for Cancellation of Trademark Registration No. 4-2002-004572 for "SAKURA".

Accordingly, this Bureau concludes that the competing marks are not confusingly similar, hence the Respondent-Applicant's trademark application is not proscribed by Sec. 123.1(d) of R.A. 8293, also known as the Intellectual Property Code of the Philippines.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2007-009013, together with a copy of this DECISION, be returned to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 10 March 2015.


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