



LOUIS VUITTON MALLETIER,
Opposer,

-versus-

ELIZABETH F. PEREZ DE TAGLE,
Respondent-Applicant.

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IPC No. 14-2013-00238
Opposition to:
Appln No. 4-2012-9676
Date Filed: 06 August 2012
TM: "LV KENJI"

NOTICE OF DECISION

**CASTILLO LAMAN TAN PANTALEON
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Ms. ELIZABETH F. PEREZ DE TAGLE

Respondent-Applicant
c/o Ma. Luz Buenconsejo
667 A. Bonifacio Avenue
Brgy. San Juan, Cainta, Rizal

GREETINGS:

Please be informed that Decision No. 2015 - 23 dated March 10, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 10, 2015.

For the Director:

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



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IPC No. 14-2013-00238

Opposition to Trademark

Application No. 4-2012-9676

Date Filed: 06 August 2012

Trademark: "LV KENJI"

Decision No. 2015- 23

DECISION

Louis Vuitton Malletier¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-9676. The contested application, filed by Elizabeth F. Perez De Tagle² ("Respondent-Applicant"), covers the mark "LV KENJI" for use on "soap" under Class 03 of the International Classification of Goods³.

The Opposer maintains that the Respondent-Applicant's applied mark "LV KENJI" is confusingly similar to its own mark "LV", which it has registered worldwide. It asserts that the contested mark is comprised of the initials "LV" in a very similar font style and arrangement, that the letter "L" is depicted similarly as the vertical limb is thicker than the horizontal limb and that the letters "L" and "V" overlap each other. It claims that the presence of "LV KENJI" in the market world cause confusion in the minds of the general public and deceptively confuse them as to the origin of the goods it covers. It avers that the Respondent-Applicant is obviously exploiting and harping on the goodwill of its own mark by seeking registration of the contested mark.

In support of its Opposition, the Opposer's submitted, among others, the judicial affidavits of Ms. Severine Gatti and Atty. Teresa Paz B. Grecia Pascual, with annexes, and the original copies of its registrations from France, Office for Harmonization in the Internal Market (OHIM) and United States Patent and Trademark Office (USPTO).

This Bureau issued a Notice to Answer dated 13 December 2013 and served a copy thereof upon the Respondent-Applicant. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 21 April 2014

¹ A corporation organized and existing under the laws of the Republic of France with principal offices at 2, Rue de Pont-Neuf, 75001 Paris, France.

² A Filipino, of legal age and with principal address on record at 667 A. Bonifacio Avenue, Barangay San Juan, Cainta, Rizal.

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.

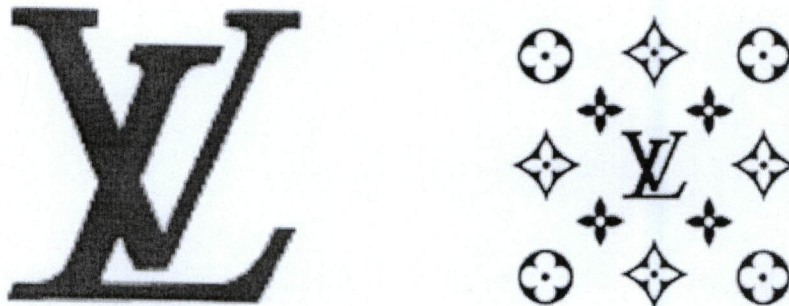
Order No. 2014-504 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the trademark "LV KENJI" should be allowed registration.

Records reveal that the Opposer has registered its mark "LV" under Certificate of Registration No. 4-1990-422301 issued as early as 08 June 1993. It was also issued registration for the mark "LV LOGO" on 19 December 2005 and 30 January 2006 under Certificates of Registration Nos. 4-1997-127637 and 4-2003-5130, respectively. Then on 05 July 2012, it was granted registration for its "DESIGN MARK (TOILE MONOGRAM)" under Certificate of Registration No. 4-2011-11175.

Now, to determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the competing marks are shown below for comparison:

Opposer's Marks



Respondent-Applicant's Mark



When one looks at the Opposer's mark, what is impressed and retained in the eyes and mind are the overlapping letters "LV". This letter combination is the dominant feature of the mark that identifies the product and the source thereof. Upon scrutiny of Respondent-Applicant's mark, the same not only appropriates identical letter combination but also the style and font thereof. There is no doubt that the two marks are identical in spelling and the same sounding when pronounced. Notwithstanding the Respondent-Applicant's addition of the word "KENJI", the requisite distinctiveness of a registrable trademark is not met.

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 purchased as to cause him to purchase the one supposing it to be the other.⁴

Moreover, the Opposer's registrations include goods under Class 03, specifically soaps, which the Respondent-Applicant seeks to register its mark "LV KENJI". Thus, it is highly probable that the purchasers would be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. In fact, it is impossible not to remember the Opposer's mark "LV" when one encounters the Respondent-Applicant's mark "LV KENJI" in view of the latter's adoption of the letters "L" and "V", which are presented practically in the same manner as the former. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.⁵

Furthermore, 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 between the plaintiff and defendant which, in fact, does not exist."⁶

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.⁷ Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The Respondent-Applicant was given ample opportunity to defend her trademark application but she did not bother to do so.

⁴ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁵ Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

⁶ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 8 August 2010.

⁷ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

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. 4-2012-9676 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 March 2015.



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