



KYOWA HAKKO CO. LTD.,
Opposer,

-versus-

WILCON DY GO,
Respondent-Applicant.

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IPC No. 14-2011-00545
Opposition to:
Appln. Serial No. 4-2011-008047
Date Filed: 11 July 2011
TM: "AGUA GLUTA"

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NOTICE OF DECISION

E. B. ASTUDILLO & ASSOCIATES

Counsel for the Opposer
10th Floor Citibank Center
8741 Paseo De Roxas
Makati City

WILSON DY GO

Respondent-Applicant
2066 Candido Street
Mapulang Lupa, Valenzuela City

GREETINGS:

Please be informed that Decision No. 2015 - 69 dated May 03, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 03, 2015.

For the Director:

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



KYOWA HAKKO CO. LTD., } **IPC NO. 14-2011-00545**
Opposer, } Opposition to:
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-versus- } Appln. Ser. No. 4-2011-008047
 } Date Filed: 11 July 2011
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WILSON DY GO, } Trademark: "AGUA GLUTA"
Respondent-Applicant. }
x-----x } Decision No. 2015- 69

DECISION

KYOWA HAKKO CO. LTD., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2011-008047. The application, filed by WILSON DY GO (Respondent-Applicant)², covers the mark "AGUA GLUTA", for use on "purified drinking water, beverages, sports drinks" under Class 32 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

"6. The trademark AGUA GLUTA being applied for by respondent-applicant is confusingly similar to opposer's trademark AQUAGLUTA, as to be likely, when applied or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

"2. The registration of the trademark 'AGUA GLUTA' in the name of the Respondent will violate Sec. 123.1, subparagraph (d) of the Intellectual Property Code of the Philippines, to wit:

'Sec. 123. Registrability.-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;

¹ A corporation duly organized and existing under the laws of Japan with address at 1-6-1Ohtemachi, Chiyoda-ku, Tokyo, Japan

² Filipino with address at 2066 Candido Street, Mupalang Lupa, Valenzuela City

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

"8. The registration of the trademark AGUA GLUTA in the name of respondent-applicant is contrary to the provisions of the Intellectual Property Code of the Philippines."

The Opposer also alleges, among others, the following facts:

"17. xxx The dominant feature in opposer's mark AQUAGLUTA is the mark itself, eight (8) out of (9) letters of which are identical to those of respondent-applicant's mark AGUA GLUTA. The different second letters in opposer's and respondent-applicant's trademark is inconsequential. This marginal distinction does not sufficiently distinguish the two marks from each other as they are similar in pronunciation, syntax, sound and appearance. As such, the two marks are, for all intents and purposes, practically identical and confusingly similar. In fact, the second letter Q in opposer's mark vis-a-vis G of respondent-applicant's mark look alike when viewed from a distance; thus, compounding the likelihood of confusion between the marks AQUAGLUTA and AGUA GLUTA. The purchasing public will easily recognize and remember the common letters A-U-A-G-L-U-T-A, and hence, it is very easy to mistake respondent-applicant's products bearing the mark AGUA GLUTA for opposer's goods bearing the mark AQUAGLUTA.

"18. Opposer's mark and respondent-applicant's mark both related goods

Opposer's mark AQUAGLUTA covers:

'Oxidized glutathione for use in the manufacture of conmetics, pharmaceuticals, food and dietary supplements; chemicals for use inthe manufacture of cosmetics, pharmaceuticals, food or dietary supplements; chemical additives for use in the manufacture of cosmetics, pharmaceuticals, food or dietary supplements' under Class 1.

'Cosmetic preparations containing oxidized glutathione for skin care, hair treatment, make-up and oral care; cosmetic preparations' under Class 30.

'Dietary supplements containing oxidized glutathione for maintaning healthy body and skin; dietary supplements' under Class 5.

while respondent-applicant's mark AGUA GLUTA covers:

'Purified drinking water, beverages, sports drinks' under Class 32.

Evidently, both marks are used on related goods. Both marks cover goods for personal health and beauty care. Both are sold, marketed and/or found in the same channels of business and trade. Hence,

confusion will be more likely to arise in the minds of the purchasing public.

To support its opposition, the Opposer submitted as evidence the following:

1. Legalized Affidavit-Testimony of Mr. Shuici Ishino; and
2. Copy of Kyowa Hakko Kirin Co., Ltd.'s Annual Report for the year 2010 and Financial Summary Fiscal 2010, with pages referring to Kyowa Hakko Bio Co. Ltd.⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 13 February 2012. The Respondent-Applicant, however, did not file an Answer.

Records show that at the time Respondent-Applicant applied for registration of the mark "AGUA GLUTA" the Opposer already registered the mark "AQUAGLUTA" under of Registration No. 4-2011-001230. The goods covered by the Opposer's trademark registration are under Class 05, namely: "Dietary supplements containing oxidized glutathione for maintaining healthy body and skin; dietary supplements", while the Respondent-Applicant's trademark application indicates use as "Purified drinking water, beverages, sports drinks" under Class 32.

But are the competing marks, depicted below resemble each other such that confusion, even deception, is likely to occur?

The competing marks are reproduced below:

AQUAGLUTA

AGUA GLUTA

Opposer's mark

Respondent-Applicant's mark

The marks have eight (8) similar letters, differing only in that the Respondent-Applicant uses the letter "G" instead of "Q". Opposer's mark joins AQUA and GLUTA in one word while the Respondent-Applicant separates the terms, AGUA and GLUTA. Considering their striking similarity, the buying public may likely be confused specially since the marks are used on related goods. Even if the marks are applied on goods of different classification, dietary supplements and sports drinks and beverages may be sold through the same channels of trade.

Succinctly, because the Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

⁴ Exhibits "A" and "B"

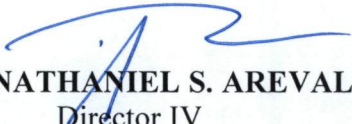
Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of 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.⁵

The public interest, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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.⁶

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2011-008047 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 3 May 2015.


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

⁵ *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

⁶ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).