



**2GO GROUP, INC. (formerly ATS
Consolidated, Inc.),**

Opposer,

-versus-

ZALDY BULILAN,

Respondent-Applicant.

x-----x

IPC No. 14-2012-00558

Opposition to:

Appln. Serial No. 4-2011-501876

Date Filed: 12 December 2011

TM: "2GO CUP"

NOTICE OF DECISION

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ZALDY BULILAN


Respondent-Applicant
Blk. 33, Lot 26, Jalapeno Street
Robinsons Homes East
San Jose, Antipolo City

GREETINGS:

Please be informed that Decision No. 2015 - 163 dated August 05, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 05, 2015.

For the Director:


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



2GO GROUP, INC. (formerly ATS Consolidated, Inc.),
Opposer,

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Opposition to:

ZALDY BULILAN,
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Appln. No. 4-2011-501876
Date Filed: 12 December 2011
Trademark : "2GO CUP"

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Decision No. 2015 - 163

DECISION

2GO GROUP, INC., formerly ATS Consolidated, Inc., ("Opposer")¹ filed a verified opposition to Trademark Application Serial No. 4-2011-501876. The application, filed by ZALDY BULILAN ("Respondent-Applicant")², covers the mark "2GO CUP" for use on goods under classes³ 16 namely: *foldable paper cups*; and, 30 namely: *coffee, tea, juice in powder/granular form contained in foldable cup*.

The Opposer alleges the following:

"5. 2GO opposes the above-mentioned application of Bulilan on the ground that the said application is identical or confusingly similar to the trademarks '2GO' and '2GO Together' of 2GO. Section 123 of the IP Code provides that a mark cannot be registered if it is identical or confusingly similar to, or is a translation of a trademark already registered in the Philippines.

"6. The use and registration of the trademark '2GO Cup' of Bulilan would indicated a connection between the goods and Bulilan and the above-mentioned services of 2GO, which will likely result to damages on the part of 2GO.

"7. Further, Section 155 of the IP Code provides that infringement is present in case there is a reproduction of a registered ark or a dominant feature thereof in connection with the sale of any goods. x x x

"8. Based on the foregoing provision, the consuming public is likely to (i) be confused, (ii) be deceived and (iii) make mistakes as to the origin of the merchandise of Bulilan and will result to the diminution of the distinctiveness and goodwill of 2GO, the registered trademark owner '2GO' since 16 October 2006 and '2GO Together' since 26 November 2010, and who has used, promoted and marketed the aforesaid trademarks for its freight services, as early as the year 2006.

x x x

"10. It is clear from the above quoted-decision that 2GO is entitled to the protection of its trademark '2GO' and '2GO Together' in view of the efforts of 2GO to increase the popularity and sales of its freight services through the investment of countless resources in advertising and marketing of its products. Moreover, Bulilan is free to choose from wide selection of words,

¹ A corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at 12th Floor Times Plaza Building, U.N. Avenue corner Taft Avenue, Ermita, Manila

² With address at Blk. 33 Lot 26, Jalapeno St., Robinsons Homes East San Jose, Antipolo City, Philippines.

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.

names, symbols, emblems, signs, or devices, or any combination thereof to identify and distinguish his goods from that of others.

The Opposer's evidence consists of the following:

1. Certified true copy of Certificate of Registration No. 4-2004-009621 for 2GO;
2. Certified true copy of Certificate of Registration No. 4-2010-002405 for 2GO TOGETHER AND DEVICE; and,
3. Copy of Motion for Extension of Time.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 10 January 2013. Respondent-Applicant however, did not file an answer. Thus, he was declared in default and this instant case is deemed submitted for decision.⁴

Should the Respondent-Applicant be allowed to register the trademark 2GO CUP?

As culled from the records and evidence, the Opposer has valid and existing Registration No. 4-2004-009621 for its mark "2GO" dated 16 October 2006⁵; and, Registration No. 4-2010-002405 for its mark "2GO together" dated 26 November 2010⁶. On the other hand, Respondent-Applicant filed its application for the mark "2GO-CUP" on 12 December 2011.

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



Opposer's Trademarks



Respondent-Applicant's Trademark

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,

⁴ Order No. 2013-993 dated 11 July 2013.

⁵ Exhibit "1" of Opposer.

⁶ Exhibit "2" of Opposer.

spelling, and pronunciation, of words used; and the setting in which the words appear" may be considered.⁷ 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 eyes can easily see that the marks are different. The similarity between the marks manifests in the word mark 2GO. Such resemblance, however, is not sufficient to conclude that confusion is likely to occur. The appearance of the word "CUP" in Respondent-Applicant's applied mark "2GO-CUP" in a plain font makes the mark easily distinguishable to that of the Opposer's "2GO" mark in magenta color using the meta or verdana font.

Moreover, confusion or mistake, much less deception, is unlikely in this instance because the goods or service covered by Opposer's trademark registration are far different from that of the Respondent-Applicant's. The Opposer's marks cover class 39 for freight services⁸; while the Respondent-Applicant's applied mark cover classes 16 and 30 for foldable paper cups, and coffee, tea, juice in powder granular form contained in foldable cup, respectively. The parties' corresponding service and goods neither flow in the same channels of trade nor target the same market as to result to any confusion. A consumer could easily discern that there is no connection between the two marks where the Opposer has freight service, compared to Respondent-Applicant's business of various beverage in cups.

Corollarily, the enunciation of the Supreme Court in the case of *Mighty Corporation vs. E. & J. Gallo Winery*⁹ aptly states that:

"A very important circumstance though is whether there exists likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. The 'purchaser' is not the 'completely unwary consumer' but is the 'ordinarily intelligent buyer' considering the type of product involved. he is 'accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The situation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase."

In this regard, the Trademark Registry, the contents of which this Bureau can take cognizance of via judicial notice, consist of marks that contain "2GO" covering goods/service different from Opposer's freight service, such as: FISH2GO (Reg. No. 42013102172 dated 03 July 2014); GOODIES2GO (Reg. No. 42013003995 dated 24 October 2014); ACADEMY 2GO (Reg. No. 42013003995 dated 14 June 2013); CAKE 2GO (Reg. No. 42012001679 dated 12 April 2013); OPM2GO (Reg. No. 42012000771 dated 24 May 2012); and, TURON 2GO (Reg. No. 42008008714 dated 30 March 2009).¹⁰ These marks are owned by entities other than the Opposer. It appears that "2GO" is a suggestive mark. While there is no definition for "2GO", it suggests or implies an immediate solution to a problem or that which is conveniently and readily available to certain needs of consumers. Hence, to sustain this opposition solely on the ground that the competing marks both contain "2GO" would have the unintended effect of giving

⁷ *Etepha A.G. vs. Director of Patents*, G.R. No. L-20635, 31 March 1966.

⁸ Exhibits "1" and "2" of Opposer.

⁹ G.R. No. 154342, 14 July 2004.

¹⁰ IPOPHL Trademarks Database, available at <http://www.wipo.int/branddb/ph/en/> (last access 05 August 2015).

the Opposer exclusive use of the same, despite the difference or unrelated character of the goods or service offered.

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.¹¹ This Bureau finds that the Respondent-Applicant's mark meets this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-501876 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 05 August 2015.


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

¹¹ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.