



AVIDA LAND CORPORATION,
Opposer,

-versus-

XU ZI FU,
Respondent-Applicant.

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} **IPC No. 14-2014-00045**
} Opposition to:
} Appln Serial No. 4-2013-009116
} Date Filed: 01 August 2013
} **TM: "AVIDA"**

NOTICE OF DECISION

QUISUMBING TORRES
Counsel for the Opposer
12th Floor, Net One Center
26th Street corner 3rd Avenue
Crescent Park West, Bonifacio Global City
Taguig City

XU ZI FU
Respondent-Applicant
Tower C, 2203 Gotesco Twin Towers
1129 N. Lopez Street
Ermita, Manila

GREETINGS:

Please be informed that Decision No. 2015 - 160 dated August 04, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 04, 2015.

For the Director:


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



AVIDA LAND CORPORATION,
Opposer,

-versus-

XU ZI FU,
Respondent-Applicant.

IPC No. 14-2014-00045

Opposition to Trademark
Application No. 4-2013-009116
Date Filed: 01 August 2013
Trademark: **"AVIDA"**

x ----- x

Decision No. 2015- 160

DECISION

Avida Land Corporation¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-009116. The contested application, filed by Xu Zi Fu.² ("Respondent-Applicant"), covers the mark "AVIDA" for use on "*dvd player, amplifier, speakers, microphone, television (crt, lcd, led)*" and "*electric fan, electric rice cooker, electric stove, gas stove, electric airpot, electric jug, electric oven toaster*" under Classes 9 and 11, respectively, of the International Classification of Goods³.

The Opposer maintains that it used its "AVIDA" mark in relation to real estate development projects and services as early as 2006 and that it has applications and/or registrations therefore in Classes 36 and 37. According to the Opposer, it has sixty-six (66) projects in more than twenty-nine (29) locations to date and has more than sixteen thousand (16,000) registered sellers and agents in the Philippines and around one hundred fifty (150) sellers, brokers and marketing partners abroad. Within the past five years, its revenues for real estate sales have reached more than twenty four billion (P24B) and it budgets one hundred million (P100M) to three hundred million (P300M) per annum for advertising and promotional activities. It has also won various recognitions and awards.

The Opposer contends that the Respondent-Applicant's mark is identical to its own registered mark except in font style or lettering. It argues that home appliances are related to real estate development as it promotes its real estate products by depicting various electric and electronic home appliances in its brochures and other marketing materials. It avers that "AVIDA" is a fanciful mark and that it commissioned BrandLab, an advertising agency, to come up with a possible name and flagship brand. It claims that its mark is well-known and that it is entitled to protection of its tradename.

¹A domestic corporation with business address at 909 40th Street North, Bonifacio Triangle, Bonifacio Global City 1634, Taguig City.

²With known address at Tower C, 2203 Gotesco Twin towers, 1129 N. Lopez St., Ermita Manila.

³The 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.

In support of its Opposition, the Opposer submitted the following as evidence the affidavit of Maria Teresa Tatco, with annexes, and copies of the first page of the Amended Articles of Incorporation and Amended By-Laws.⁴

A Notice to Answer was issued and served upon the Respondent-Applicant on 30 April 2014. The latter, however, did not file his Answer. Accordingly, the Hearing Officer issued Order No. 2014-1153 on 12 September 2014 declaring the Respondent-Applicant in default and the case submitted for decision.

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

Records reveal that at the time Respondent-Applicant filed an application for registration for the mark "AVIDA", the Opposer has a pending application for "AVIDA SETTINGS" mark filed on 18 June 2013⁵, among others. The Trademark Registry shows that the same was eventually granted registration under Certificate of Registration No. 4-2013-7069 issued on 25 December 2014.

The mark applied for registration by the Respondent-Applicant is identical to the Opposer's marks as shown below:

AVIDA Avida Settings

Opposer's marks

Avida

Respondent-Applicant's mark

The difference in font styles is of no moment; in looks and in sound, the mark applied for by the Respondent-Applicant is the same as the Opposer's.

This Bureau noticed that the goods indicated in the Respondent-Applicant's trademark application are not similar or closely related to those covered by the Opposer's registration. Section 123.1(d) of RA No. 8293, also known as the Intellectual Property Code ("IP Code"), however, states that:

"Section 123. Registrability. - 123.1. A mark cannot be registered if it:

⁴ Marked as Exhibits "D" to "U", inclusive.

⁵ Exhibit "H".

x x x

(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; x x x (Emphasis supplied.)

The proscription thus applies even when the goods and/or services covered are not the same or closely related when such resemblance between the marks involved is likely "to deceive or cause confusion".

Noteworthy, the word "AVIDA" is not an ordinary English word that has dictionary meaning. As stated in the affidavit of Ma. Teresa A. Tatco⁶, the word "AVIDA" is derived from the Latin words "ave", which means bird or celebration, and "vida", which means life. As such, the mark is considered arbitrary and fanciful. Apropos to the foregoing, it is inconceivable for the Respondent-Applicant to come up with a mark "AVIDA" without having been inspired or motivated by an intention to imitate the Opposer's mark. The Respondent-Applicant was given ample opportunity to explain how he came up with his mark. However, he did not file his Answer. As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.⁷

Succinctly, it is settled that the likelihood of confusion, mistake and/or deception will subsist not only as to the consumer's perception of the goods but also on the origins thereof. 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."⁸

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

⁶ Exhibit "D".

⁷ American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.

⁸ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

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. Based on the above discussion, Respondent-Applicant's trademark failed to meet this function.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2013-009116 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 04 August 2015.


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