SUYEN CORPORATION,	}	**IPC No. 14-2011-00228**
Opposer,	}	Opposition to:
	}	Application No.: 4-2010-011559
	}	Date filed: 21 October 2010
-versus-	}	**TM: "PIMPLE FIX ACNE BLEND"**
	}	
	}	
	}	
NATHANIEL LUA,	}	
Respondent-Applicant.	}	

x----------x

NOTICE OF DECISION

MIGALLOS & LUNA LAW OFFICES
Counsel for the Opposer
7th Floor, The Phinma Plaza
39 Plaza Drive, Rockwell Center
Makati City

NATHANIEL LUA
Respondent-Applicant
Room 8A, 455 Jaboneros Street
Binondo, Manila

GREETINGS:

Please be informed that Decision No. 2015 - 171 dated August 27, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 27, 2015.

For the Director:

MARILYN S. RETUTAL
IPRS IV, Bureau of Legal Affairs

SUYEN COPORATION,
Opposer,

-versus-

NATHANIEL LUA,
Respondent-Applicant.
x ---------- x

IPC No. 14-2011-00228
Opposition to Trademark
Application No. 4-2010-011559
Date Filed: 21 October 2010

Trademark: **"PIMPLE FIX ACNE BLEND"**

Decision No. 2015-171

DECISION

Suyen Corporation[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2010-011559. The contested application, filed by Nathaniel Lua[2] ("Respondent-Applicant"), covers the mark "PIMPLE FIX ACNE BLEND" for use on *"cosmetics – creams, lotion, oils, toner, gels, facial wash, facial cleanser, facial mask, ointment, soap"* under Class 03 of the International Classification of Goods[3].

According to the Opposer, it has long been in the business of manufacturing, marketing, advertising, distributing and selling clothing apparel under its mark "BENCH". It has expanded business to include hair care and other lifestyle products and has likewise penetrated international market and the service industry. Even before it opened its first "FIX Bench Salon" in 2001, it has already manufactured, advertised, distributed and sold hair products under its "FIX" trademark, which it first used on March 2011.

The Opposer maintains that it applied for registration of the mark "FIX" on 20 March 2000 and the same was granted on 01 July 2004. It likewise claims to have registered the marks "FIX Bench Salon", "I-FIX & Device of letter I" and "bench/FIX PROFESSIONAL". It thus contends that the Respondent-Applicant's mark is identical or confusingly similar to its own "FIX" trademarks.

In support of their Opposition, the Opposer submitted affidavit of Kristine Anne C. Lim, with annexes.[4]

This Bureau issued a Notice to Answer and served a copy thereof to the Respondent-Applicant on 05 July 2011. The latter, however, did not file his Answer.

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[1] A corporation organized and existing under the laws of the Republic of the Philippines with business address at 2214 Tolentino Street, Pasay City.
[2] With known address at Room 8A, 455 Jaboners Street, Binondo, Manila.
[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.
[4] Marked as Exhibits "A" to "Y".

Thus, the Hearing Officer issued Office Order No. 2015-1182 on 06 August 2015 declaring the Respondent-Applicant in default and the case submitted for resolution.

The issue to be resolved in this case is whether the Respondent-Applicant's trademark application for "PIMPLE FIX ACNE BLEND" should be allowed.

Section 123.1 (d) of RA 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

> *"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;*
>
> *xxx."*

Records reveal that at the time the Respondent-Applicant filed his application for registration of the contested mark, the Opposer has already registered its mark "FIX" under Certificate of Registration No. 4-2000-00133 issued on 01 July 2004 for *"hair lotion, hair gel, hair crème, hair polish, hair shampoo, hair conditioner"* under Class 03.[5] The Opposer likewise holds registration for the marks "FIX BENCH SALON", "I-FIX & Device OF LETTER I" and "BENCH/FIX PROFESSIONAL" issued on 07 February 2004, 16 July 2006 and 18 September 2006, respectively.[6]

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

Opposer's Marks

FIX FIX bench salon

instant FIX PROFESSIONAL

[5] Exhibit "B".
[6] Exhibits "C", "D" and "E".

Respondent-Applicant's Mark

PIMPLE FIX

ACNE BLEND

The Opposer's marks consist of the word "FIX" alone or in conjunction with other words. This is the prevalent feature of its marks. Perusing the Respondent-Applicant's mark, the same word is appropriated. Although the latter's mark consists of four words, the last two "ACNE BLEND" are disclaimed. Taking into consideration the undisclaimed portion of the Respondent-Applicant's applied mark, this Bureau finds the likelihood of confusion subsists. Mere addition of the word "PIMPLE" to "FIX" does not lend the mark the distinctiveness as required by law. After all, 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.[7]

Succinctly, since the Respondent-Applicant will also use or uses the mark on goods also falling under Class 03, the slight differences in the competing marks will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. After all, the determinative factor in a contest involving registration of trade mark is not whether the challenged mark would *actually* cause confusion or deception of the purchasers but whether the use of such mark would *likely* cause confusion or mistake on the part of the buying public.[8]

Moreover, it is settled that 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."[9]

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[7] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.
[8] American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.
[9] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

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.[10] Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function.

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. 4-2010-011559 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 August 2015.

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

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