

KENSONIC, INC.,
Opposer,

-versus-

VERONICA TENG,
Respondent-Applicant.

x-----x

IPC No. 14-2010-00113
Opposition to:
Appln. Serial No. 4-2009-008929
Date Filed: 04 September 2009
TM: **"SAKURA & FIVE PETAL
FLOWER & DEVICE"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 256 dated November 05, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 05, 2015.

For the Director:


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

KENSONIC, INC.,

Opposer,

- versus -

VERONICA TENG,

Respondent-Applicant.

IPC NO. 14 – 2010- 000113

Opposition to:

Appln Serial No. 42009008929

Date filed: 04 September 2009

**TM: "SAKURA & FIVE PETAL
FLOWER DEVICE"**

DECISION NO. 2015 - 256

X-----X

DECISION

KENSONIC, INC. (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2009-008929. The application filed by VERONICA TENG, (Respondent-Applicant)², covers the mark "SAKURA & FIVE PETAL FLOWER DEVICE," for use on "Wall Type Exhaust Fan, Ceiling Tubular Ventilating Fan, Industrial Ventilating Fan, Insect Killer Bulbs" under Class 11 of the International Classification of Goods³

In its Opposition, the Opposer alleges the following: 1.) The allowance of the registration of the Opposed Application will contravene Section 123.1 (d) of the Intellectual Property Code because the proposed "Sakura & Five Petal Flower Device" mark is identical to and/or so confusingly similar to Opposer's two trademark applications with prior filing dates and the goods subject of the Opposed Application are similar, if not so closely related, to herein Opposer's goods; 2.) Respondent-Applicant is not entitled to register the trademark "SAKURA"; 3.) Opposer has also extensively promoted the "SAKURA" mark in the Philippines; 4.) this Honorable Office has already conclusively found that Opposer is the first user of the "SAKURA" mark as early as 1994 and the approval of the opposed application will violate the Opposer's exclusive use of the said mark and will dilute the distinctive character and reputation of the mark.

In support of its Opposition, the Opposer submitted the following evidence:

1. Exhibit A – Secretary Certificate authorizing Ms. Nenita K. Tsang to sign Verification of the Notice of Opposition;

¹ A corporation organized and existing under the laws of the Philippines with business address at Lot 3 T.S. Sarino Subdivision, Real St., Pulang Lupa, Las Pinas City.

² A Filipino with address at Unit A-4 No. 23 Sta Rosa Street, Quezon 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.*

2. Exhibit B – Certification by IPOPHIL that the attached Decision dated 21 August 2008 is a true copy of the original document on file with IPOPHIL;
3. Exhibit B-1 – Decision Dated 21 August 2008 of BLA in IPC No. 14-2007-00177;
4. Exhibit B-2 – Computer Print out of Ms. Veronica Teng’s Application No. 4-2009-002608 for the mark “Sakura and Flower Device” over classed 7 and 11 goods, which was Refused Registration;
5. Exhibit C – Certification by the IPOPHIL that the attached Decision dated 29 November 2005 is true copy of the original on file with the IPOPHIL;
6. Exhibit C-1 – Decision dated 29 November 2005 of the BLA in IPC No. 14-2004-00160;
7. Exhibit D - Certification by the IPOPHIL that the attached Decision dated 9 August 2006 is true copy of the original on file with the IPOPHIL;
8. Exhibit D-1 – Entry of Judgment / Execution of Decision in IPC No. 14-2004-00160;
9. Exhibit E – Certification by the IPOPHIL that the attached Decision dated 07 August 2008 is a true copy of the original document on file with IPOPHIL;
10. Exhibit E-1 – Decision dated 7 August 2008 of the BLA in IPC No. 14-2006-00183;
11. Exhibit F – Certification by the IPOPHIL that the attached Decision dated 21 August 2008 is a true copy of the original document on file with IPOPHIL;
12. Exhibit F-1 – Decision dated 11 August 2008 rendered in IPC No. 14 – 2006 – 00139;
13. Exhibit G – Certification by the IPOPHIL that the attached Decision dated 24 October 2008 is a true copy of the original document on file with IPOPHIL;
14. Exhibit G-1 – Decision dated 24 October 2008 of the BLA in IPC No. 14 – 2006 - 00126;
15. Exhibit H – Certification by the IPOPHIL that the attached Opposer Application for Registration No. 4-2001-005131 for Sakura mark with filing date of 18 July 2001 is a true copy of the original on file;
16. Exhibit H-1 – Opposer’s Application No. 4-2001-005131;
17. Exhibit I – Certification by the IPOPHIL that the attached Application No. 4-2007-011902 for registration of the Sakura mark is a true copy of the original on file with IPOPHIL;
18. Exhibit I-1 – Opposer’s Application No. 4-2007-011902;
19. Exhibit J – Certification by the IPOPHIL that the copy of the opposer’s Declaration of Actual Use annexed thereto is a true copy of the original on file with the IPOPHIL;
20. Exhibit J-1 – Opposer’s Declaration of Actual Use of the mark “SAKURA” from 22 October 1994 dated 22 October 2002;
21. Exhibit K – Duly notarized Affidavit of Ownership executed by Nenita Tsang, President of Kensonic, Inc;
22. Exhibit L – Copy certification issued by a Notary Public certifying that the attached Certificate of Registration is a true, accurate and complete copy of the original;
23. Exhibit L-1 – DTI Certificate of Registration of Audio Crown Enterprises dated 5 July 1991;

24. Exhibit M – Certification by the IPOPHIL that the attached Sales Invoice No. 7643 issued by Audio Crown Enterprises dated 14 December 1993 is a true copy of the original on file with IPOPHIL;
25. Exhibit M-1 – Sales Invoice No. 7643 issued by Audio Commercial Enterprises dated 14 December 1993;
26. Exhibit N – Certification by the IPOPHIL that the various Bills of Lading and Societe Generale de Surveillance Clean Report of Findings showing importation by Audio Crown Enterprises of various electronic and audio equipment annexed thereto are true copies of the original on file with IPOPHIL;
27. Exhibit N-1 to N-24 – Various Bills of Lading and Societe Generale de Surveillance Clean Report of Findings showing importation by Audio Crown Enterprises of various electronic and audio equipment;
28. Exhibit O – Articles of Incorporation of Kensonic, Inc;
29. Exhibit O-1 – Certified true copy of the General Information Sheet filed by Kensonic Inc. with the SEC on 30 April 2009;
30. Exhibit P to P-5 – Identical Affidavits executed by the proprietors of Master Fix General Merchandise Lights & Sounds, Solid Electronics, Martcom Cellular & Electronics, Martcom Cellular & Electronic Center, Unitronic Marketing, Newport electronic Center, and Electrocom Electronic Supply;
31. Exhibit Q – Certification issued by the IPOPHIL that the various newspaper articles, their respective translations, and the certifications annexed thereto are true copies of the original on file with IPOPHIL;
32. Exhibit Q-1 – Certified true copy of the news article published by Kensonic, Inc. in 12 August 2008 of the Philippine Star;
33. Exhibit Q-3 – Certified true copy of the news article published by Kensonic, Inc. in page 16 (lower right fold) of the 23 August 2008 issue of the Philippine Chinese Daily;
34. Exhibit Q-3a – Certified true copy of the Certification issued by Ms. Magdalena Uy attesting that Exhibit “Q-3b) is a true, complete and accurate English translation of Exhibit “Q-3”;
35. Exhibit Q-3b – Certified true copy of the English translation of the news article published by Kensonic, Inc. in page 16 of the 23 August 2008 issue of Philippine Chinese Daily;
36. Exhibit Q-4 – Certified true copy of the news article published by Kensonic, Inc. in page 25 of the 14 August 2008 issue of the World News as part of its advertising and publicity campaign;
37. Exhibit Q-4a – Certified true copy of the Certification issued by Ms. Magdalena Uy attesting that Exhibit Q-4b is a true, complete and accurate English translation of Exhibit “Q-4”;
38. Exhibit Q-4b – Certified true copy of the English translation of the news article published by Kensonic, Inc. in page 25 of the 14 August 2008 issue of the World News;
39. Exhibit Q-5 – Certified true copy of the news article published by Kensonic, Inc. in page 9 of the 18 August 2008 issue of the United Daily News as part of its advertising and publicity campaign;
40. Exhibit Q-5a – Certified true copy of the Certification issued by Ms. Magdalena Uy attesting that Exhibit Q-5b is a true, complete and accurate English translation of Exhibit “Q-5”;

41. Exhibit Q – 5b – Certified true copy of the English translation of the news article published by Kensonic, Inc. in page 9 of the 18 August 2008 issue of United Daily News;
42. Exhibit R – Curriculum Vitae of Ms. Magdalena Uy;
43. Exhibit S – Certification by IPOPHL that the attached sales invoices nos. 6632, 6648, 19292, 4585, 4598, 7002, 8526, 71005, 83362, 97550, 97896, 01027, 00002, 00361, 01138 and 16990 are true copies of the original on file as part of the records of IPC No. 14-2009-00065;
44. Exhibit S-1 – Certified true copy of the Sales Invoice No. 6632 dated 16 September 1995 issued by Kensonic, Inc. for the sale of “Sakura TM -88” (a product under Exhibits “BB-8” and “CC-3”);
45. Exhibit S-2 – Certified true copy of the Sales Invoice No. 6648 dated 16 September 1995 issued by Kensonic, Inc. to Audio Tech Electronics for the sale of “Sakura TM -89 and Sakura – TC-88” (a product under Exhibits “BB-7” and “CC-2”);
46. Exhibit S-3 - Certified true copy of the Sales Invoice No. 19392 dated 7 December 1996 issued by Kensonic, Inc. to Sound Quest for the sale of “Sakura EQ133”;
47. Exhibit S-4 - Certified true copy of the Sales Invoice No. 4585 dated 30 October 1999 issued by Kensonic, Inc. to Kids Amusement 2000 for the sale of 5 pieces of “AM AV-2210” (a product under Exhibit “BB-1”);
48. Exhibit S-5 - Certified true copy of the Sales Invoice No. 4598 dated 30 October 1999 issued by Kensonic, Inc. to Berkly Electronics for the sale of 2 pieces of “AM-AV318” (a product under Exhibit “BB-3”);
49. Exhibit S-6 - Certified true copy of the Sales Invoice No. 7002 dated 22 September 1998 issued by Kensonic, Inc. to ITL Audio Electronics for the sale of “AV 2100” ;
50. Exhibit S-7 - Certified true copy of the Sales Invoice No. 8526 dated 13 January 2000 issued by Kensonic, Inc. to Berkly Electronics for the sale of “AM AV-2080”, “AM AV-2000B”, “AM AV-858” and “AM AV-810.” (a product under Exhibits “AA-7”, “AA-6”, “AA-2” and “AA-2”);
51. Exhibit S-8 – Certified true copy of the Sales Invoice No. 71005 dated 19 December 2003 issued by Kensonic, Inc. to Getz Electronics Sales Center for the sale of “AM AV-388” (a product under Exhibit “BB-5”);
52. Exhibit S-9 - Certified true copy of the Sales Invoice No. 83362 dated 15 December 2005 issued by Kensonic, Inc. to SanJun Electronics for the sale of “AM AV 5020” (a product under Exhibit “AA-10”);
53. Exhibit S-10 - Certified true copy of the Sales Invoice No. 97550 dated 20 December 2005 issued by Kensonic, Inc. to Deeco Electronics - Alabang for the sale of “AM AV-5023”, “AM AV-387A”, “AM AV-3022”, “AM AV-389” and AM AV-732” (a product under Exhibits “AA-8”, “AA-4”, “AA-9”, “AA-5” and “AA-1”);
54. Exhibit S-11 - Certified true copy of the Sales Invoice No. 97896 dated 26 December 2005 issued by Kensonic, Inc. to SanJun Electronics for the sale of “AM AV-5021”;
55. Exhibit S-12 - Certified true copy of the Sales Invoice No. 01027 dated 15 January 2007 issued by Kensonic, Inc. to Milysa Electronics for the sale of “AV-732” (a product under Exhibit “AA-1”);

56. Exhibit S-13 - Certified true copy of the Sales Invoice No. 00002 dated 22 December 2006 issued by Kensonic, Inc. to Picsound Electronics Parts for the sale of "AV-5023" (a product under Exhibit "AA-8");
57. Exhibit S-14 - Certified true copy of the Sales Invoice No. 00361 dated 30 December 2006 issued by Kensonic, Inc. to RMJ Elec & Gen Mdse for the sale of "AV-5023" (a product under Exhibit "AA-8");
58. Exhibit S-15 - Certified true copy of the Sales Invoice No. 01138 dated 17 January 2007 issued by Kensonic, Inc. to Sound Quest Electronic Centre for the sale of "AV-733" (a product under Exhibit "AA-2");
59. Exhibit S-16 - Certified true copy of the Sales Invoice No. 16990 dated 29 January 2008 issued by Kensonic, Inc. to Bataan Trading for the sale of "AV-735" (a product under Exhibit "AA-2");
60. Exhibit T - Certification by IPOPHL that the attached sales invoices nos. 8386, 19436, 19408 and 4554 are true copies of the original on file as part of the records of IPC No. 14-2004-00160;
61. Exhibit T-1 - Certified true copies of the Sales Invoice No. 8386 dated 20 November 1995 issued by Kensonic, Inc. for the sale of "TC-89" (a product under Exhibit "CC-2");
62. Exhibit T-2 - Certified true copy of the Sales Invoice No. 19436 dated 14 December 1996 issued by Kensonic, Inc. to Berkly Electronics for the sale of "AV-2100" and "EQ -144";
63. Exhibit T-3 - Certified true copy of the Sales Invoice No. 19408 issued by Kensonic, Inc. to Pennylane Gen. Merchandise for the sale of "TM-88" and "TC-89" (a product under Exhibits "CC-2" and "CC-3");
64. Exhibit T-4 - Certified true copy of the Sales Invoice No. 4554 dated 29 October 1999 for the sale of "AV-810", "AV-2800", and "AV - 358" (a product under Exhibits "BB-2", "BB-1", and "BB-4");
65. Exhibit U - Affidavit executed by Tsang Wing Kuen, Vice President and Treasurer of Kensonic, Inc.;
66. Exhibit V - Certification issued by IPOPHL that the Memorandum of agreement dated 8 August 1994 and the corresponding English translation are true copies of the originals as part of the records of IPC No. 14-2010-00108;
67. Exhibit V-1 - Certified true copy of the Memorandum of Agreement dated 8 August 1994 between Kensonic Inc. and Foshan Shaw Audio Electric Co. Ltd.;
68. Exhibit V-2 - Certified true copy of the certification of Ms. Magdalena Uy attesting that Memorandum of Agreement dated 8 August 1994 between Kensonic Inc. and Foshan Shaw Audio Electric Co. Ltd. are true complete and accurate English translation of Exhibit "V-1";
69. Exhibit V-3 - Certified true copy of the English translation of the Memorandum of Agreement dated 8 August 1994 between Kensonic Inc. and Foshan Shaw Audio Electric Co. Ltd.;
70. Exhibit W - Certification issued by IPOPHL that the Memorandum of Agreement between Kensonic, Inc. and Xi Hua Audio Equipment Factory, the corresponding English translation are true copies of the originals as part of the records of IPC No. 14-2010-00108;
71. Exhibit W-1 - Certified true copy of the Memorandum of Agreement between Kensonic Inc. and Xi Hua Audio Equipment Factory;
72. Exhibit W-2 - Certified true copy of the certification of Ms. Magdalena Uy attesting that Memorandum of Agreement between Kensonic Inc. and Xi Hua

- Audio Equipment Factory are true complete and accurate English translation of Exhibit "W-1";
73. Exhibit W-3 – Certified true copy of the English translation of the Memorandum of Agreement between Kensonic Inc. and Xi Hua Audio Equipment Factory;
 74. Exhibit X – Certification issued by IPOPHL that the Memorandum of Agreement between Kensonic, Inc. and Fine Star Acoustic Installation Factory Ltd, the corresponding English translation and certification annexed thereto are true copies of the originals as part of the records of IPC No. 14-2010-00108;
 75. Exhibit X-1 – Certified true copy of the Memorandum of Agreement between Kensonic Inc. and Fine Star Acoustic Installation Factory Ltd.;
 76. Exhibit X-2 – Certified true copy of the certification of Ms. Magdalena Uy attesting that Memorandum of Agreement between Kensonic Inc. and Fine Star Acoustic Installation Factory Ltd are true complete and accurate English translation;
 77. Exhibit X-3 – Certified true copy of the English translation of the Memorandum of Agreement between Kensonic Inc. and Fine Star Acoustic Installation Factory Ltd.;
 78. Exhibit Y – Bill of Lading No. HKMN /CFS-1022 dated 12 January 1994;
 79. Exhibit Y-1 – Packing List No. 93CMS067 dated 12 January 1994;
 80. Exhibit Y-2 – SGS Advance Clearance Report No.CHN046681 dated 13 May 1998;
 81. Exhibit Y-3 – SGS Advance Clearance Report No.CHN043106 dated 13 February 1998;
 82. Exhibit Y-4 – Original Certificate of Origin dated 17 October 1994;
 83. Exhibit Z - Certification issued by IPOPHL that the letters and communications annexed thereto are true copies of the originals submitted to IPOPHL;
 84. Exhibit Z-1 to Z-20 – Copies of various letters and communications between Kensonic and Waterwell Trading Co of Hongkong regarding the details of the Sakura product manuals;
 85. Exhibit AA – Copy certification issued by Notary Public certifying that the attached brochure is true, accurate and complete copy of the original;
 86. Exhibit AA-1 to AA-10 – Sakura products as shown in Sakura the Future of Entertainment Manual Vol. 3;
 87. Exhibit BB – Copy certification issued by Notary Public certifying that the attached brochure is true, accurate and complete copy of the original;
 88. Exhibit BB-1 to BB-8 – Sakura products as shown in Sakura the Future of Entertainment Manual;
 89. Exhibit CC – Copy certification issued by Notary Public certifying that the attached brochure is true, accurate and complete copy of the original;
 90. Exhibit CC-1 to CC-3 – Sakura products as shown in Sakura the Future of Entertainment Manual;
 91. Exhibit DD – Copy certification issued by Notary Public certifying that the attached brochure, Sakura New Generation DVD Flyer, is true, accurate and complete copy of the original; and
 92. Exhibit DD-1– Sakura New Generation DVD Flyer;

In her Verified Answer filed on 11 August 2010, the Respondent-Applicant denied the material allegations in the Opposition. The Respondent-Applicant averred, among other things, that: 1) she filed the instant application in good faith after she voluntarily surrendered

her earlier Registration No. 4-2006-001055 on 28 September 2011; 2) the earlier decisions cited by Opposer are neither binding on her, nor do they constitute a bar to the approval of her application as she is not a party to the said inter partes cases; 3) the goods covered by the instant application are neither the same nor closely related to or even competitive with the goods specified in the Opposer's application; 4) the Opposer has no existing registration for the trademark "Sakura" and/or "Sakura & Device" and the Opposer has no monopoly nor exclusive right to register and use the said trademarks for all kinds and classes of goods; and 5) the word "Sakura" or variants was not coined nor invented by the Opposer and it was a very weak mark.

The Respondent-Applicant's evidence consists of the following:

1. Exhibit 1 – Duplicate Original of Application 4-2009-008929 for the registration of the trademark "SAKURA & FIVE PETAL FLOWER DEVICE";
2. Exhibit 2 – Duplicate Original of the Notice of Allowance with mailing date of 18 January 2010;
3. Exhibit 3 – Print-out of Respondent-Applicant's mark SAKURA & FIVE PETAL FLOWER DEVICE as published in the e-Gazette last 1 February 2010;
4. Exhibit 4 – Duplicate Original of Respondent-Applicant's letter of withdrawal of Application SN 4-2009-002608;
5. Exhibit 5 – A copy of Respondent-Applicant's Motion for Reconsideration in IPC No. 14-2007-00177;
6. Exhibit 6 – Print out of this Office's Trademark Search; and
7. Exhibit 7 – Respondent-Applicant's duly notarized Affidavit

The Preliminary Conference was terminated on 22 September 2010 and consequently, the parties submitted their respective position papers on 15 October 2010.

The issue to be resolved in the instant case is whether the trademark "SAKURA & FIVE PETAL FLOWER DEVICE" should be allowed for registration.

Under Section 123.1 of the Intellectual Property Code, it specifically provided that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date with respect to the same goods or services or closely related goods or services, or if it is nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed her trademark application, the Opposer has prior and existing trademark applications: one with serial no. 4-2001-0015131 filed as early as 18 July 2001 and another with serial no. 4-2007-011902 filed on 25 October 2007. The Opposer's applications cover "*amplifiers, DVD player, VCD Player, Tape Deck, Tuner Equalizer, Mixer, Digital Voice Recorder, Video Disc Recorder*" and "*Speaker, Baffles, Microphone, TV Wall Bracket, TV Booster Speaker Wire, Speaker Parts, Baffles Accessories, Car Security Devices, Headphone, Speaker Stand, Cable Wire, RCA Jack, Microphone Jack, Microphone Wire, Adaptor HDMI (High Definition Multi Video Interfacing) Speaker Wire, Digital Video Interfacing Cable, Crossover Network, Car Speaker, Television*" under Class 9.

The marks are depicted below:



Opposer's Trademark



Respondent-Applicant's Trademark

The marks are practically identical. The word "SAKURA" is the most prominent feature of both marks. The additional device containing a flower inside a red box on the Respondent-Applicant's mark is not sufficient to distinguish its mark from that of the Opposer. Furthermore, the "flower" device on the Respondent-Applicant is just a representation of the word mark itself and has no separate identity apart from the said word mark. Even with the additional device on Respondent's mark, the two competing trademarks are similar and will leave the same impression on the buying public.

Corollary, this Bureau finds that the goods subject of the marks are closely related goods. They are electrical or electronic products that are usually found or sold through the same channel of trade or stores. It is not unusual to find electrical/electronic devices like video and music devices of the Opposer displayed side by side with the lights and ventilation products of the Respondent-Applicant.

In this regard, this Bureau has consistently ruled in Inter Partes cases involving the herein parties and trademarks. In previous cases docketed as IPC No. 14-2007-00177, IPC No. 14-2010-00112 and IPC No. 14-2010-00108, this Bureau did not allow the registration of the Respondent-Applicant marks for being confusingly similar to the "SAKURA" mark of the Opposer who is the senior trademark-applicant. In those cases, the goods involve belong to Classes 9 and 11.

Moreover, this Bureau's decision in Inter Partes Case No. 14-2010-00112 was affirmed by the Director General on Appeal in Appeal Case No. 14-2013-0047. The Director General in that case sustained the right of Opposer Kensonic Inc. on goods falling under Class 9 and 11, and explicitly concluded that likelihood of confusion on the origin of the goods of the parties would likely subsist. The pertinent portion of the above Office of the Director General decision is quoted, to wit:

"It is noted that both parties deals with electrical and electronic products and devices. Thus, although the goods covered by the above-mentioned marks are different, they are not entirely unrelated. But even if this Office would agree to the proposition that there are differences in the nature of the goods of the Applicant and the Appellee, it is not farfetched that because of the similarity in these marks, there would be an impression that the Applicant's mark is owned by the Appellee or is just variation of the Appellee's mark. x x x

In this regard, the Appellant's goods may be assumed to originate with the Appellee and the public would then be deceived to believe that there is some connection between the Appellant and the Appellee, which, in fact does not exist. The likelihood of confusion would subsist not on the purchaser's perception of goods but on the origins thereof.

Consequently, the registration of the Appellant's mark may cause damage to the Appellee which has no control over the Appellant's product covered by SAKURA & DEVICE.

The Appellee has shown that it has used its mark as early as 1994. Thus, it is not entirely remote that the Appellant knew of the mark SAKURA being used on electronic products. However, aside from alleging that she filed her trademark application in good faith, she did not explain how she arrived in using this mark."

Succinctly, because the Respondent-Applicant will use his mark on goods that are similar and/or closely related to the Opposer's, the consumer is likely to assume that the Respondent-Applicant's goods originate from or sponsored by the Opposer or believe that there is a connection between them, as in a trademark licensing agreement. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court.⁴


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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

It is emphasized that the essence of the trademark registration is to give protection to the owner of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is applied; 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.⁵ The mark applied for registration by the Respondent-Applicant does not serve this function.

WHEREFORE, premises considered the instant Opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2009-008929 be returned, together with a copy of this Decision, to the Bureau of Trademark for information and appropriate action.

SO ORDERED.

Taguig City, 5 November 2015


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

⁴ Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987

⁵ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, November 19, 1999