

**PANASONIC CORPORATION**  
(formerly known as Matsushita Electric  
Industrial Co., Ltd.),  
Opposer,

-versus-

**PENSONIC SALES & SERVICE SDN BHD,**  
Respondent-Applicant.

**IPC No. 14-2009-00023**  
Opposition to:  
Appln. Serial No. 4-2008-007100  
Date filed: 17 June 2008  
**TM: "PENSONIC & DEVICE of P"**

**NOTICE OF DECISION**

LAW OFFICES OF  
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By: Joan Montoya

**GREETINGS:**

Please be informed that Decision No. 2015 - 288 dated December 22, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 22, 2015.

For the Director:

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

**PANASONIC CORPORATION**  
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Respondent-Applicant.

**DECISION NO. 2015 - 288**

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## DECISION

PANASONIC CORPORATION (Opposer)<sup>1</sup>, filed an Opposition to Trademark Application Serial No. 4-2008-007100. The application filed, by PENSONIC SALES & SERVICE SDN BHD. (Respondent-Applicant)<sup>2</sup>, covers the mark "PENSONIC & DEVICE of P" for "*Motors and Engines (Except for Land Vehicles); Washing Machines; Blender Machines; Electric Juice Extractor; Electric Food Processors; Electric Meat Grinders; Electric Coffee Mills; Electric Ice Crushers; Electric Lawn Mowers; Electric Vacuum Cleaners; Sewing Machines and Parts and Fittings thereof; Electric Motors for Machines*" under Class 7 of the International Classification of Goods.<sup>3</sup>

The Opposer alleges:

"1.)The trademark PENSONIC & Device of P being applied for by respondent-applicant is confusingly similar to opposer's mark PANASONIC, as to be likely, when applied to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the general public. Its registration is contrary to Section 123.1 subparagraph (d) of Republic Act No. 8293 x x x

"2.)The registration of the trademark PENSONIC & Device of P in the name of respondent-applicant will gravely prejudice and caused irreparable damage to opposer's rights over the registered trademark PANASONIC

<sup>1</sup> A corporation organized under the laws of Japan with business address at 1006, Oaza Kadoma, Kadoma-shi Osaka 571-8501, Japan.

<sup>2</sup> A corporation organized and existing under the laws of Malaysia with address at Plot 98, Perusahaan Maju 8, Bukit Tengah Industrial Estate, 13600 Prai, Penang, Malaysia.

<sup>3</sup> 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.

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE

which the opposer acquired by virtue of Section 122 of the Intellectual Property Code of the Philippines x x x

- "3.)The registration of the confusingly similar trademark PENSONIC & Device of P in the name of respondent-applicant is grossly violative of opposer's intellectual property rights as the duly registered and sole owner of the trademark PANASONIC under Certificate of Registration No. 4-1995-105374 dated September 4, 2000; Certificate of Registration No. 4-2000-610374 dated December 11, 2006; and Certificate of Registration No. 4-2005-001391 dated June 16, 2006. x x x
- "4.)Being the registered owner of the mark PANASONIC, opposer has the exclusive right to prevent respondent-applicant from using the confusingly similar mark PENSONIC & Device of P. x x x
- "5.)Opposer's trademark PANASONIC is a "world-famous" mark as defined both under international conventions and treaties and Philippine law. The registration of the confusingly similar trademark PENSONIC & Device of P in the name of respondent-applicant is contrary to Section 123.1, subparagraph (e) of the Intellectual Property Code of the Philippines, x x x
- "6.)The trademark PANASONIC being a world-famous mark, registration of respondent-applicant's confusingly similar trademark PENSONIC & Device of P is contrary to Section 123.1, subparagraph (f) of the Intellectual Property Code of the Philippines, x x x
- "7.)Being the owner of the world-famous mark PANASONIC, opposer has the statutory right to oppose the registration of the trademark PENSONIC & Device of P, or indeed, petition the cancellation of its registration, or sue respondent-applicant for unfair competition and/or trademark infringement. x x x
- "8.)The protection accorded to registered well-known mark in the Philippines as in the case of Panasonic Corporation, formerly known as Matsushita Electric Industrial Co., Ltd. applies not only to the goods or services belonging to the same class as the registered famous mark but also to the goods and services which may not be similar but would indicate a connection to the goods or services of the registered world-famous mark. In the instant case, the goods of respondent-applicant are either identical, similar or are closely related to the goods of opposer herein. x x x
- "9.)Opposer's famous mark PANASONIC fall squarely within or completely satisfies the criteria for determining whether a mark is well known under Rule 102 of the Rules and Regulations on Trademarks, Servicemarks, Tradenames, and Marked or Stamped Containers dated October 29, 1998 x x x
- "10.)The registration of the trademark PENSONIC & Device of P in the name of respondent-applicant will also violate Section 6bis of the Paris

Convention for the Protection of Industrial Property, to which the Philippines is a party having acceded thereto as early as September 27, 1965, x x x

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

- Exhibit "A" – Benelux Trademark Registration No. 0347265 for the mark "PANASONIC";
- Exhibit "A-1" – Canadian Trademark Registration No. TMA690934 for the mark "PANASONIC";
- Exhibit "A-2" – Indian Trademark Registration No. 169306 for the mark "PANASONIC";
- Exhibit "A-3" – United Arab Emirates' Trademark Registration No. 10307 for the mark "PANASONIC";
- Exhibit "A-4" – British Trademark Registration No. 2256265 for the mark "PANASONIC";
- Exhibit "A-5" – American Trademark Registration No. 2,219,862 for the mark "PANASONIC";
- Exhibit "A-6" – Argentinian Trademark Registration No. 1611034 for the mark "PANASONIC";
- Exhibit "A-7" – Australian Trademark Registration No. 862463 for the mark "PANASONIC";
- Exhibit "A-8" – Chinese Trademark Registration No. 629488 for the mark "PANASONIC";
- Exhibit "A-9" – European Trademark Registration No. 000556621 for the mark "PANASONIC";
- Exhibit "A-10" – Egyptian Trademark Registration No. 79641 for the mark "PANASONIC";
- Exhibit "A-11" – Hong Kong's Trademark Registration No. 04967 for the mark "PANASONIC";
- Exhibit "A-12" – Indonesian Trademark Registration No. 524623 for the mark "PANASONIC";
- Exhibit "A-13" – Malaysian Trademark Registration No. 01002569 for the mark "PANASONIC";
- Exhibit "A-14" – Oman's Trademark Registration No. 6110 for the mark "PANASONIC";
- Exhibit "A-15" – Peruvian Trademark Registration No. 89559 for the mark "PANASONIC";
- Exhibit "A-16" – Russian Trademark Registration No. 104855 for the mark "PANASONIC";
- Exhibit "A-17" – Singaporean Trademark Registration No. T73/58775H for the mark "PANASONIC";
- Exhibit "A-18" – South African Trademark Registration No. 82/8834 for the mark "PANASONIC";
- Exhibit "B" – CD-ROM with selected advertisement promoting the mark "PANASONIC" in various countries around the world;
- Exhibit "C" – Decision dated June 27, 2008 in the opposition action against the mark PENSONIC & Device of P in Singapore;
- Exhibit "D" – Decision dated June 27, 2008 in the invalidation action against the mark PENSONIC & Device of P in Singapore;

- Exhibit "E" – Certified Copy of the Certificate of Registration No. 4-1995-105374 for the mark "PANASONIC" issued by the Intellectual Property Office of the Philippines;
- Exhibit "F" – Certified copy of the Certificate of Registration No. 4-2000-610374 for the mark "PANASONIC" issued by the Intellectual Property Office of the Philippines;
- Exhibit "G" – Certified Copy of Certificate of Registration No. 4-2005-001391 for the mark "PANASONIC" issued by the Intellectual Property Office of the Philippines;
- Exhibit "H" – Notarized and legalized Affidavit-Testimony of witness Yoshinobu Noda;
- Exhibit "I" – Annual Report 2008 Of Panasonic Corporation;
- Exhibit "J" – Certificate of Registration No. 4-1995-105374 for the mark "PANASONIC" issued by the Intellectual Property Office of the Philippines, the certified copy of which is attached herewith as Exhibit "E";
- Exhibit "K" – Certificate of Registration No. 4-2000-610374 for the mark "PANASONIC" issued by the Intellectual Property Office of the Philippines, the certified copy of which is attached herewith as Exhibit "F";
- Exhibit "L" – Certificate of Registration No. 4-2005-001391 for the mark "PANASONIC" issued by the Intellectual Property Office of the Philippines, the certified copy of which is attached herewith as Exhibit "G";
- Exhibit "M" – Worldwide trademark portfolio of Panasonic Corporation
- Exhibit "N" – Benelux Trademark Registration No. 0347265 for the mark "PANASONIC";
- Exhibit "N-1" – Canadian Trademark Registration No. TMA690934 for the mark "PANASONIC";
- Exhibit "N-2" – Indian Trademark Registration No. 169306 for the mark "PANASONIC";
- Exhibit "N-3" – United Arab Emirates' Trademark Registration No. 10307 for the mark "PANASONIC";
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- Exhibit "N-9" – European Trademark Registration No. 000556621 for the mark "PANASONIC";
- Exhibit "N-10" – Egyptian Trademark Registration No. 79641 for the mark "PANASONIC";
- Exhibit "N-11" – Hong Kong's Trademark Registration No. 04967 for the mark "PANASONIC";
- Exhibit "N-12" – Indonesian Trademark Registration No. 524623 for the mark

- “PANASONIC”;
- Exhibit “N-13” – Malaysian Trademark Registration No. 01002569 for the mark “PANASONIC”;
- Exhibit “N-14” – Oman’s Trademark Registration No. 6110 for the mark “PANASONIC”;
- Exhibit “N-15” – Peruvian Trademark Registration No. 89559 for the mark “PANASONIC”;
- Exhibit “N-16” – Russian Trademark Registration No. 104855 for the mark “PANASONIC”;
- Exhibit “N-17” – Singaporean Trademark Registration No. T73/58775H for the mark “PANASONIC”;
- Exhibit “N-18” – South African Trademark Registration No. 82/8834 for the mark “PANASONIC”;
- Exhibit “O” – Decision dated June 27, 2008 in the opposition action against the mark PENSONIC & Device of P in Singapore;
- Exhibit “P” – Decision dated June 27, 2008 in the opposition action against the mark PENSONIC & Device of P in Singapore;
- Exhibit “Q” – CD-ROM with selected advertisements promoting the mark PANASONIC in various countries around the world; and
- Exhibit “R” – Panasonic Brand Power Survey Report for 2004;

In its Answer, the Respondent-Applicant refutes the grounds cited in the Opposition, arguing that there is no confusing similarity between the mark ‘PENSONIC & DEVICE’ and the Opposer’s ‘Panasonic’ mark. According to the Respondent-Applicant, its products are not consumable items but consist of electrical appliances and gadgets that cater to a discerning and knowledgeable class of purchasers. The Respondent-Applicant also claims that the Opposition is barred by laches and estoppel. Furthermore, it contends that the decision of Singapore tribunal cited by the Opposer is not properly authenticated, hence inadmissible.

Subsequently, a Reply dated 18 June 2009 and Supplemental Reply dated 23 June 2009 were filed by the Opposer, alleging that:

1. the Respondent-Applicant’s Answer is a mere scrap of paper since the person who signed the verification form of the Answer showed no proof that he was authorized to act on behalf of the Respondent-Applicant;
2. the Respondent-Applicant’s claim that there is no confusing similarity between its mark and opposer’s mark is an absolute falsity since even well-trained eyes and ears would be confused by the obvious similarity of the marks;
3. it is settled jurisprudence that similarity in the dominant features of two competing marks will likely cause mistake or confusion in the minds of the purchasing public;
4. the Respondent-Applicant’s registration of the mark PENSONIC is not only an attempt to confuse the purchasing public of its colorable imitation of opposer’s mark PANASONIC, but also an attempt to confuse the source of origin of the goods;
5. the instant opposition case is not barred by laches or estoppel; and the decisions of the Intellectual Property Office of Singapore are admissible as evidence.

On 6 July 2009, a Rejoinder dated 6 July 2009 was filed by Respondent - Applicant averring that:

1. as Group Managing Director of Pensonic and having personal knowledge of the facts, Mr. Chew Choun Jin has authority to sign the Verification;
2. the IPO Rules does not require any documentary proof of the authority of the person signing the verification; jurisprudence and principles governing corporations organized under the Philippine Corporation Code do not apply to Pensonic, being a Malaysian corporation;
3. under prevailing jurisprudence verification is a formal, not a jurisdictional requirement. A defect in verification (assuming arguendo the verification is defective) is not a "fatal flaw";
4. there is no confusing similarity between Respondent-Applicant's mark and Opposer's mark;
5. the decision in 'Philip Morris' case squarely applies to this case. "Philip Morris" was decided on the basis of tests for determining confusing similarity, not on 'non use' of the mark;
6. the decision in 'Fruit of the Loom' case squarely applies to this case. Common identical elements do not necessarily result in 'confusing similarity';
7. the decision in 'Del Monte' case is squarely applicable in this case. Respondent-Applicant's products are not consumable items. They consist of electrical appliances and gadgets that cater to a discerning and knowledgeable class of purchasers;
8. given the considerable length of time that has passed, the Opposition is already barred by laches and estoppel; and
9. print outs of electronic documents require authentication before they can be admitted and considered as evidence;

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

Exhibit "1" – Affidavit of Mr. Dixon Chew, the Company's Group Managing Director;

Exhibit "2" – Affidavit of Mr. Khoo Teng Huat, the Company's Administrative Manager with the attached Annexes "A" to "K-3" which are copies of registration certificates of the Respondent's PENSONIC marks obtained from selected countries:

Annex "A" – Australian Registration Certificate No. 978717 in Class 07;

Annex "B-1" – Hong Kong Registration Certificate No. 02731 of 2003 in Class 07;

Annex "B-2" – Hong Kong Registration Certificate No. 02732 of 2003 in Class 11;

Annex "B-3" – Hong Kong Registration Certificate No. 03836 of 1996 in Class 09;

Annex "C" – Kuwait Registration Certificate No. 44156 in Class 09;

Annex "D" – Sri Lanka Registration Certificate No. 99103 in

- Class 07;
- Annex "E-1" – Indonesia Registration Certificate No. 529493 in Class 07;
- Annex "E-2" – Indonesia Registration Certificate No. 353360 in Class 09;
- Annex "E-3" – Indonesia Registration Certificate No. 529494 in Class 11;
- Annex "F" – Taiwan Registration Certificate No. 01104023 in Class 09;
- Annex "G" – Japan Registration Certificate No. 4155011 in Class 09;
- Annex "H-1" – Thailand Registration Certificate No. Kor167090 in Class 07;
- Annex "H-2" – Thailand Registration Certificate No. Kor24959 in Class 09;
- Annex "H-3" – Thailand Registration Certificate No. Kor167089 in Class 11;
- Annex "H-4" – Thailand Registration Certificate No. Kor24960 in Class 11;
- Annex "I-1" – China Registration Certificate No. 1913039 in Class 07;
- Annex "I-2" – China Registration Certificate No. 874450 in Class 09;
- Annex "I-3" – China Registration Certificate No. 1921413 in Class 11;
- Annex "J" – Korea Registration Certificate No. 115962 in Class 09;
- Annex "K-1" – Malaysia Registration Certificate No. 97001095 in Class 07;
- Annex "K-2" – Malaysia Registration Certificate No. 92/01569 in Class 09; and
- Annex "K-3" – Malaysia Registration Certificate No. 97001092 in Class 11.
- Exhibit "3" – Certificate of Registration No. 4-2001-009320 for the mark "PENSONIC" issued by the Intellectual Property Office of the Philippines;
- Exhibit "4" - List of Trademark Application filed with the Intellectual Property Office containing the word "sonic"; and
- Exhibit "4-A" - Affidavit of Noel G. Sanchez dated 2 June 2009.

After the termination of the Preliminary Conference on 9 July 2009, the parties submitted their respective position papers. Consequently, this case was submitted for decision.

The Opposer alleges that there is a defect in the verification of the Respondent-Applicant's Answer. In *Cagayan Valley Drug Corporation vs. Commissioner of Internal Revenue*<sup>4</sup>, the Supreme Court, citing numerous cases, reiterated that certain officials of a corporation by virtue of their position can sign the

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<sup>4</sup>G.R. No. 151413, February 13, 2008



verification and certification without need of a board resolution. Moreover, this office finds that the submission of the Certification issued by the Chairman of the Board of Respondent-Applicant is a substantial compliance with the proof of authority requirement.

Going now to the substantive issue in the instant case, the competing marks are reproduced below for comparison:

**Panasonic**

**PENSONIC**

Opposer's Trademark

Respondent's – Applicant's  
Trademark

The Opposition is anchored on Section 123.1 pars. (d), (e) and (f) of Republic Act No. 8293, also known as, the Intellectual Property Code of the Philippines (“IP Code”), to wit ,

123.1. A mark cannot be registered if it:

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;

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;

Upon examination of the competing trademarks, and evaluation of the records and the evidence submitted by the parties, this Bureau finds the opposition meritorious.

Both the competing word marks consist of seven (7) letters which are identical with each other, namely, the letters "P", "N", "S", "O", "N", "I" and "C." From a visual and aural standpoints, the two word marks closely resemble each other. The words PEN-SO-NIC and PA-NA-SO-NIC have almost identical sounds. The difference between the first part of the word marks, particularly, "PEN" and "PANA" is negligible and not enough to differentiate one over the other. Jurisprudence says that trademarks with *idem sonans* or similarities of sounds are sufficient ground to constitute confusing similarity in trademarks.<sup>5</sup> Confusion or even deception is likely because the goods or products covered by the competing trademarks are similar and/or closely related goods. The products subject of the applied trademark of the respondent-applicant are machine and machine tools, including motor and engines under Class 7 of the Nice Classification of Goods and Services. These are also the goods covered by the trademark registration of the Opposer, particularly, certificate of registration nos. 4-1995-105374, 4-2000-610374 and 4-2005-001391.

It is likely therefore that the goods of the Respondent-Applicant may be confused with the Opposer's or the public may commit mistake, or be deceived, in assuming that the Respondent-Applicant's goods originated from the Opposer or there is a connection between the parties and/or the goods.

Verily, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.<sup>6</sup>

Time and again, it has been held in our jurisdiction that the law does not require that the competing trademarks must be so identical as to produce actual error or mistake. It would be sufficient, for purposes of the law that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.<sup>7</sup> Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.<sup>8</sup> 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:<sup>9</sup>

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be

<sup>5</sup> Marvex Commercial Co., Inc. vs. Petra Hawpia and Co, G.R. No. L-19297, 22 December 1966

<sup>6</sup> American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.

<sup>7</sup> American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970

<sup>8</sup> Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992

<sup>9</sup> Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987

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.

The contention of the Respondent-Applicant that the instant Opposition is barred by laches or estoppel is also unavailing.


In *Regalado v. Go*<sup>10</sup>, the Supreme Court defined laches as the failure or neglect for unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting presumption that the party entitled to assert it either has abandoned it or declined to assert it. For laches to attach, it must be clearly present.

In this case and with reference to the instant trademark application for Class 7, the elements of laches or estoppel are not present. In fact, the Opposition was filed within the time period provided by law.

**WHEREFORE**, premises considered, the instant opposition to Trademark Application Serial No. 42008007100 is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 42008007100 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

**SO ORDERED.**

Taguig City, 22 December 2015

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

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<sup>10</sup> G.R. No. 167988, 6 February 2007