

**SUYEN CORPORATION,**  
Opposer,

**-versus-**

**TUPPERWARE PRODUCTS S.A.,**  
Respondent-Applicant.

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**IPC No. 14-2013-00084**  
Opposition to:  
Appln No. 4-2012-007858  
Date Filed: 29 June 2012  
**TM: "FOREVER BY MARIAN"**

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**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2016 - 11 dated January 14, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, January 14, 2016.

For the Director:

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

**SUYEN CORPORATION,**  
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**TUPPERWARE PRODUCTS S.A.,**  
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IPC No. 14-2013-00084

Opposition to Trademark  
Application No. 4-2012-007858  
Date Filed: 29 June 2012

Trademark: **FOREVER BY MARIAN**  
Decision No. 2016- 11

## DECISION

Suyen Corporation<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-007858. The contested application, filed by Tupperware Products S.A.<sup>2</sup> ("Respondent-Applicant"), covers the mark "FOREVER BY MARIAN" for use on *"perfumery, essential oils, colognes, eau de colognes, eau de toilette, body sprays, body mist, body splash; soaps, liquid soaps; shower and bath gel; shower and bath foam; hair shampoo, hair conditioner; creams, lotions, milks, oils, powders and ointments for the care and cleansing of the skin"* under Class 03 of the International Classification of Goods<sup>3</sup>.

The Opposer avers, among others, that its company was incorporated in 1985 and has been manufacturing, distributing, marketing and selling apparel and lifestyle products under different brands and trademarks, including its flagship brand "BENCH", which it registered on 30 June 1989. When it started in 1987, "BENCH" initially offered only men's shirt but Respondent-Applicant has expanded its business to a complete range of apparel and lifestyle products. It owns other brands including "HUMAN", "KASHIECA", "BENCH FIX SALON", "DIMENSIONE", "PCX" AND "BE CONNECTED". It has also penetrated the service industry and has been a pioneer in the franchising business.

The Opposer further states that it expanded its clothing products in 1993 to include women's apparel and accessories under the mark "HERBENCH", registered on 31 January 1995. Having evolved into a lifestyle brand, it now offers a wide range of personal care products. In January 2006, it launched the "KRIS AQUINO SCENTS", which paved the way for other celebrity-inspired scents including the "Lucy Torres-Gomez Scents Collection" of eau de toilette and body sprays. In order to properly identify its products, it adopted "LOVE" for the eau de toilette and

<sup>1</sup> A corporation organized and existing under Philippines laws with address at Bench tower, 30<sup>th</sup> Street. Corner Rizal Drive, Crescent Park West 5, Bonifacio Global City, Taguig 1634.

<sup>2</sup> A Swiss corporation with address at Route Du Jura 37, Fribourg, Switzerland.

<sup>3</sup> 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.

"FOREVER" and "REMEMBER" for body sprays. The "FOREVER" trademark was registered on 04 June 2007.

The Opposer asserts that the registration of the Respondent-Applicant's mark "FOREVER BY MARIAN" will work great damage and prejudice to it. It contends that the applied mark is confusingly similar to its own "FOREOVER" trademark that the ordinary purchasers will be misled into the belief that the Respondent-Applicant's products are under its sponsorship. In support of its Opposition, the Opposer submitted the affidavit of Mr. Jude W. Ong, its company's General Manager, with annexes and printouts of the Respondent-Applicant's fragrances endorsed by Marian Rivera.<sup>4</sup>

For its part, the Respondent-Applicant filed its Answer on 27 August 2013 alleging, among others, that it belongs to the same group of companies as Tupperware Brands Corporation. According to the Respondent-Applicant, the Tupperware brand products made their debut in 1946 and before the said period, the inventor Earl Tupper's plastic-like materials of many manufacturers were dedicated to the war effort. After a decade of success in the United States, it expanded in other parts of the world. In the Philippines, Tupperware was introduced in 1966. To help promote its products in the country, it engages brand ambassadors and celebrity endorsers for marketing and ad campaigns. These celebrities have launched, or are planning to launch, their own signature fragrances in collaboration with the company, including Marian Rivera for "FOREVER FOR MARIAN", Sam Milby for "SAM MILBY INTENSE" and Maja Salvador for "MAJA" or "SHINE BY MAJA".

The Respondent-Applicant refutes the allegation that the subject mark is confusingly similar to the Opposer's "FOREVER" mark in appearance, pronunciation, verbal translation of the pictures or designs involved and in suggestion. It moreover contends that the Trademark Registry is crowded with registrations and/or applications under Class 03 that incorporate the "FOREVER" element, six of which were registered before that of the Opposer's. According to the Respondent-Applicant, the issue of confusing similarity between the subject marks was already touched during the prosecution of its trademark application. The trademark examiner cited the Opposer's "FOREVER" mark but it had successfully overcome the citation after its submission of Paper No. 2. The Respondent-Applicant's evidence includes:<sup>5</sup>

1. copies of its 2009, 2010 and 2012 Sustainability Reports;
2. copy of Part 1 of the Annual Report (Form 10k-A) it submitted with the U.S. Securities and Exchange Commission;

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<sup>4</sup> Marked as Exhibits "A" to "J", inclusive.

<sup>5</sup> Marked as Exhibits "3" to "10", inclusive.

3. copies of internet blogs on the launching of the signature fragrance of Marian Rivera;
4. copies of photographs/publicity still featuring, among others, Marian Rivera, Maja Salvador and Sam Milby as endorsers;
5. copies of registrations and applications with "FOREVER" element; and
6. copies of Paper No. 2, its response thereto and the Notice of Application of "FOREVER BY MARIAN".

Pursuant to Office Order No. 154, s. 2010, the Hearing Officer referred the case to mediation. On 24 March 2014, this Bureau's Alternative Dispute Resolution Services submitted a report that the parties refused to mediate. Accordingly, the Hearing Officer conducted and terminated the preliminary conference on 10 October wherein the parties were directed to submit their respective position papers. After which, the case is deemed submitted for decision.

Should the Respondent-Applicant be allowed to register the mark "FOREVER BY MARIAN" in its favor?

Records reveal that the Opposer has a valid and existing registration of its trademark "FOREVER" under Certificate of registration No. 4-2006-011661, issued on 04 June 2007. On the other hand, the Respondent-Applicant only filed the contested application on 29 June 2012.

To determine whether the competing marks are confusingly similar, the two are reproduced below:

*Opposer's mark*

**FOREVER BY MARIAN**

*Respondent-Applicant's mark*

The marks similarly appropriate the word "FOREVER". Be that as it may, this Bureau does not agree with Opposer's contention that its "FOREVER" trademark is confusingly similar to the applied mark "FOREVER BY MARIAN". "FOREVER" is a common English word and hence, what will determine whether the marks are indeed confusingly similar are the words and/or device that accompany the same. In fact, the Trademark Registry shows many other registered marks, belonging to different entities using the term for goods also under Class 04, including "'FOREVER FAIR" under Certificate of Registration No. 4-2014-504674 issued on 09 January 2015, "FOREVER YOUNG" under Certificate of Registration No. 4-2011-003585 issued on

10 November 2011, "FOREVER AMBER" under Certificate of Registration No. 4-1998-008458 issued on 17 January 2005 and "FOREVER MINE" under Certificate of Registration No. 4-2007-012030 issued on 07 July 2008.

Therefore, the mere use of "FOREVER" is insufficient to conclude that there is likelihood of confusion. It bears noting that some of these trademarks were applied for and/or used by their respective owners even prior the Opposer's registration of its mark. To rule otherwise is tantamount to conferring upon the Opposer exclusive right over the common word "FOREVER" and will have the unintended effect of opening doors for cancellation of valid and existing trademark registrations of parties using "FOREVER" as their trademark or a part thereof to the latter's damage and prejudice. The fact that these "FOREVER" marks co-exist in the market, each with its own distinctive presentation and coverage of goods or services, does not indicate a likelihood of confusion.

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.<sup>6</sup> It is found that Respondent-Applicant sufficiently met the requirements of the law.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application No. 4-2012-007858 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 14 January 2016.

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

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<sup>6</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.