

TEA VENTURES CO. INC.,
Opposer,

-versus-

KRAFT FOODS GLOBAL BRANDS LLC,
Respondent- Applicant.

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}
} **IPC No. 14-2009-00196**
} Opposition to:
} Appln. No. 4-2008-013415
} Date Filed: 30 October 2008
} **TM: "TANG SIGNATURE LOGO**
} **WITH FRUIT TEAZ IN BLUE**
} **OVAL DEVICE"**

NOTICE OF DECISION

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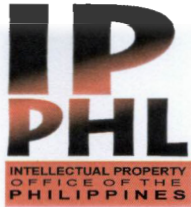
GREETINGS:

Please be informed that Decision No. 2016 - 73 dated March 08, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 08, 2016.

For the Director:

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



TEA VENTURES CO. INC.,

Opposer,

-versus-

KRAFT FOODS GLOBAL BRANDS LLC,

Respondent-Applicant.

X -----X

IPC No. 14-2009-000196

Appln. Serial No. 4-2008-013415

(Filing Date: 30 October 2008)

Trademark: "TANG SIGNATURE LOGO
WITH FRUIT TEAZ IN BLUE
OVAL DEVICE"

Decision No. 2016 - 73

DECISION

TEA VENTURES CO. INC. ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2008-013415. The application, filed by KRAFT FOODS GLOBAL BRANDS LLC, ("Respondent-Applicant")², covers the mark "TANG SIGNATURE LOGO WITH FRUIT TEAZ IN BLUE OVAL DEVICE" for use on "fruit flavoured iced tea mixes" under classes 30 and 32 of the International Classification of Goods and Services³.

The Opposer alleges among other things the following:

"I. Opposer is the prior registrant and senior user of the 'TEAZERS' mark on the very same and identical goods endorsed by Respondent-Applicant's 'TANG FRUIT TEAZ' mark.

"II. Opposer is the prior and good faith registrant of the TEAZERS mark. TEAZERS, used in relation to flavored tea drink mixes, is an arbitrary designation referring to jokes, laughter and camaraderie shared between friends or amongst children, while simultaneously being a play on the words 'Tea' and its plural 'Teas'.

"III. TEAZERS, and its derivatives TEAZ/E, by virtue of its exclusive, extensive, continued, and popular use since September 1995, has established itself as a famous and well-known mark.

"IV. Evidence Adduces showing KRAFT's repeated use of Opposer's TEAZERS Registration and its derivatives, and KRAFT's admission thereof, probative in concluding Likelihood of Confusion and a finding of Infringement against Respondent-Applicant.

"V. Under the Dominancy Test, Respondent-Applicant's TANG FRUIT TEAZ application is confusingly similar to Opposer's registration.

"VI. Opposer's protected rights over the registration TEAZERS, and its derivatives TEAZ and TEAZE, precludes registration of the confusingly similar mark TANG FRUIT TEAZ in favour of Respondent-Applicant over identical goods.

¹ A domestic corporation with principal office address at 2286 Pasong Tamo Extension, Makati City.

² A limited liability company organized under the laws of Delaware, United States of America with principal office address at Three Lakes Drive, Northfield, Illinois, 60093, USA.

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

“VII. The application for the registration of Respondent-Applicant’s ‘TANG FRUIT TEAZ’ intrinsically flawed and fatally infirm for being tainted with bad faith and fraud.

“VIII. The Respondent-Applicant’s use of the application ‘TANG FRUIT TEAZ’ on flavoured tea drink mixes indicates a false connection to Opposer’s ‘TEAZERS’ flavoured tea drink mix products.

“IX. Opposer and Respondent-Applicant, as immediate and direct business rivals in competition with one another, requires a lesser showing of similarity between its sponsored marks, in determining fraudulent intent.

“X. Confluence of evidence of Respondent-Applicant’s bad faith in pursuing registration of ‘TANG FRUIT TEAZ’ is substantial.

The Opposer’s evidence consists of the following⁴:

1. Special Power of Attorney issued by Tea Ventures Co., Inc.;
2. Declaration of Actual Use of the mark TEAZERS;
3. Certified true copy of TEAZERS Registration;
4. Promotional materials nationwide;
5. Downloaded interview of Anna Alcantara, Owner, Managing Director, General Manager of Teazers, Inc.;
6. Marketing flyers of Opposer in line of TEAZERS tea drinks;
7. Photos of various marketing stands and promotional activities by Opposer in significant number of schools and malls;
8. Sample promotional paraphernalia distributed by Opposer in marketing the TEAZERS, and its derivatives TEAZ/E;
9. Print search results of various trademark applications;
10. Decoration, packaging, marketing and promotion of tea drink mixes in the use of "FRUIT TEAZ TEAZPERIMENTS", "ITS ORANGE TEAZERRIFIC!", "WWW.TEAZPERIMENTS.COM", "TAMBAYAN: HEADQUARTERS NG MGA ASTIG NA TEAZERS", "TEAZ-O-RAMA", "TEAZ TEAZPERIMENT CHALLENGE" with the invitation "SIGN UP AND BE A TEAZER!", "HEY TEAZER/S!", "SIGN UP AND BE A TEAZER!", "NUMBER OF TEAZERS", and "UP STUDENT COUNCIL TEAZERS".
11. Newspaper article entitled, “Ban the Boredom with Teazperiments”;
12. Demand letter dated 20 March 2009; and
13. Reply to demand letter dated 03 and 14 April 2009.

The Respondent-Applicant filed its Verified Answer on 12 January 2010 alleging among other things the following:

“I. Respondent-Applicant is not in bad faith in filing a trademark application for its mark Tang Signature Logo with Fruit Teaz in Blue Oval Device.

“II. Respondent-Applicant’s mark Tang Signature Logo with Fruit Teaz in Blue Oval device is not confusingly similar to Opposer’s Mark Teazers.

- A. The application of the dominancy test will negate the likelihood of confusion between the Opposer’s mark TEAZERS and Respondent-Applicant’s mark TANG Signature Logo with Fruit Teaz in Blue Oval Device.

⁴ Marked as Exhibits "A" to "N", inclusive.

- B. The application of the holistic test will likewise negate the likelihood of confusion between Opposer's mark TEAZERS and Respondent-Applicant's mark TANG Signature Logo with Fruit Teaz in Blue Oval Device.
- C. There is no likelihood of confusion of goods between Opposer's products bearing the mark TEAZERS and Respondent-Applicant's mark bearing the TANG Signature Logo with Fruit Teaz in Blue Oval Device.
- D. Confusion of origin between Opposer's products bearing the mark TEAZERS and Respondent-Applicant's mark bearing the TANG Signature Logo with Fruit Teaz in Blue Oval Device is unlikely.

"III. The use of the word Teaz in Respondent-Applicant's mark Tang Signature Logo with Fruit Teaz in Blue Oval Device does not constitute trademark infringement and/or unfair competition.

"IV. Opposer's TEAZERS mark is not well-known in accordance with Section 123.1 (e) of R.A. 8293 and Rule 102 of the Trademark Rules and Regulations.

"V. Opposer's evidence has no probative value as they have not been attested to or identified by way of an affidavit."

The Respondent-Applicant's evidence consists of the following⁵:

1. Affidavit executed by Susan H. Frahling;
2. Kraft Foods 2008 Fact Sheet;
3. Stories of Kraft Foods Inventors and their Inventions;
4. Certified true copy of Philippine Trademark Reg. No. 66473 for TANG;
5. Photos of TANG product sold in China, Thailand, Turkey, Philippines, Brazil and Colombia;
6. Photo of TANG product manufactured in Thailand;
7. Kraft Foods inc. 2004 Annual Report;
8. Samples of worldwide print advertisements of TANG in the years 1950, 1960, 1970, 1980, 1990, 2000 and onwards;
9. List of worldwide trademark registrations for the mark TANG;
10. Certified true copy of U.S. Trademark (TM) Reg. No. 1,974,439, Canadian TM Reg. No. TMA 118,843, Costa Rican TM Reg. No. 35488, Australian TM Reg. No. 845867, Malaysian TM Reg. No. 93009057, Spanish TM Reg. No. 5101160, Portuguese TM Reg. No. 176749, and Argentina TM Reg. No. 2150479;
11. Photocopies of other TANG worldwide TM registrations in various countries;
12. Certified true copy of Philippine TM Application No. 4-2008-013415;
13. Photos showing products with the mark TANG Signature Logo with Fruit Teaz in Blue Oval Device as sold to the public;
14. Affidavit executed by Mark de Joya;
15. Sachets/Labels showing the use of the mark TANG Signature Logo with Fruit Teaz in Blue Oval Device;
16. Stickers showing the advertisement of the products TANG Fruit Teaz;
17. Point-of-sale materials for the products TANG Fruit Teaz;
18. Compact Disc (CD) of television commercials for the products TANG Fruit Teaz;
19. Market share data of nationwide sale of TANG Signature Logo with Fruit Teaz in Blue Oval Device;

⁵ Marked as Exhibit "1" to "12", inclusive.

20. Qualitative results on beverage category and equity of TANG;
21. Certification on the Project Teaz; and,
22. Photos of contending products.

Should the Respondent-Applicant be allowed to register the trademark **TANG Signature Logo with Fruit Teaz in Blue Oval Device**?

The instant opposition is anchored on Section 123.1 paragraphs (a) (d) and (e) of the Intellectual Property Code which provides that a mark cannot be registered on the following grounds, respectively:

(a) consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

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 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 the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application on 30 October 2008, the Opposer has existing registration for the mark "TEAZERS" on 25 March 1999 (Reg. No. 4-1999-002063, issued on 18 January 2004).

The competing marks are depicted below:



Opposer's mark



Respondent-Applicant's mark

The similarity between the marks is that the word "TEAZ" in the Respondent-Applicant's mark comprises the first four letters of the Opposer's mark. Be that as it may, confusion, much less deception, is unlikely to occur in this instance. This Bureau noticed that the words "TEAZ" and "TEAZER" are derived from the word "tea" which is the product or goods covered by the Opposer's trademark registration and indicated in the Respondent-Applicant's trademark application. While there is some creativity involved that render the words "TEAZ" and "TEAZER" eligible for registration as trademarks, these are, at the most, suggestive. Suggestive marks, which are almost descriptive, are weak marks.

A handwritten signature in blue ink, located in the bottom right corner of the page.

Thus, this Bureau finds that the competing marks are not confusingly similar. The totality of the aural and visual properties of both marks is distinct from each other. They impress respective originality. The Opposer has only the word mark TEAZERS, described as "Teal green text with magenta shadow and a white key line. The shadow is in the base of the name teasers and shifted slightly to the right."⁶ On the other hand, Respondent-Applicant has a composite mark consisting of the words TANG, FRUIT, and TEAZ, and the blue oval design. It disclaims in its trademark application the words "FRUIT" and "TEA" apart from the mark as shown or sought to be registered.⁷ While the word TEAZ of the Respondent-Applicant can be seen in Opposer's TEAZERS, it cannot be concluded that the former was derived from the latter considering that both marks are inspired by their goods (i.e., tea beverage). In the case of Respondent-Applicant, the mark TEAZ combined with other word marks with a blue oval device reveals a distinct mark which is capable of appropriation. The appearance of the font, design and color, and the composite nature of in the Respondent-Applicant's mark make it distinguishable from that of the Opposer's.

It is doubtful if the consumers in encountering the mark TEAZERS will have in mind or be reminded of the mark TANG FRUIT TEAZ. It is emphasized that the essence of trademark registration is to give protection to the owners of the 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 or 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.⁸ This Bureau finds that the Respondent-Applicant's mark meets this function.

WHEREFORE, premises considered, the Opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 04-2008-013415 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 08 March 2016.


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

⁶ Id.

⁷ See File wrapper records.

⁸ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No., 115508, 19 Nov. 1999.