



CERES FRUITS JUICES (PROPRIETARY) LTD., }
Opposer, }

-versus-

CERES ENTERPRISES LIMITED, }
Respondent- Applicant. }

IPC No. 14-2014-00544
Opposition to:
Appln. No. M/0000/01174085
Date Filed: 17 June 2008
TM: "CERES"

X-----X

NOTICE OF DECISION

SYCIP SALAZAR HERNANDEZ & GATMAITAN
Counsel for the Opposer
ScyipLaw Center
105 Paseo de Roxas, Makati City

CRUZ MARCELO & TENEFRANCIA
Counsel for Respondent- Applicant
9th, 10, 11th & 12 Floors, One Orion
11th Avenue corner University Parkway
Bonifacio Global City, 1634 Taguig City

GREETINGS:

Please be informed that Decision No. 2016 - 110 - dated April 11, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 11, 2016.

For the Director:


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

CERES FRUIT JUICES (PROPRIETARY) LTD.,

Opposer,

-versus-

CERES ENTERPRISES LIMITED,

Respondent-Applicant.

IPC No. 14-2014-00544
Opposition to Trademark
Appln. No. M/0000/01174085
Date Filed: 17 June 2008
Trademark: "CERES"

X ----- X Decision No. 2016- 110

DECISION

Ceres Fruit Juices (Proprietary) Ltd.¹ ("Opposer") filed an opposition to Trademark Application Serial No. M/0000/01174085. The contested application, filed by Ceres Enterprises Limited² ("Respondent-Applicant"), covers the mark "CERES" for use on "*dietetic food preparations adapted for medical use; dietetic substances adapted for medical use; food for babies; infant formula; food for infants; food for medically restricted diets; powdered milk for babies; dietary supplements for humans; vitamins; vitamin preparations; nutritional supplements; protein dietary supplements; mineral food supplements; dietary supplements consisting of amino acids*"; "*meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats; fruit chips; potato chips; beans, preserved; fish, preserved; fruit, preserved; lentils, preserved; meat, preserved; mushrooms, preserved; olives, preserved; onions, preserved; peas, preserved; potatoes, preserved, preserved garlic; vegetables, preserved; soya beans, preserved, for food; nuts, prepared; nut-based snack foods; nuts, processed; linseed oil for culinary purposes; almonds, ground; soya beans, processed; bouillon; coconut, dessicated; peanut butter; peanuts, processed; soups; soup mixes; soya milk; soya-based snack foods; tahini; tofu; hummus; cheese; yoghurt; fruit-based snack food; dried fruit-based snacks; snack mixes consisting of dehydrated fruit and processed nuts; potato crisps; potato-based snack foods; vegetable chips; soy chips; soya chips; vegetable-based snack foods; protein-based nutrient-dense snack foods; fruit jellies*" and "*rice; tapioca; sago; flour; preparation made from cereals; bread; sugar; pastry; honey; treacle; yeast; baking powder; salt; mustard; vinegar; spices; condiments; salad dressing; farinaceous foods; farinaceous food pastes; cereal based snack food; pancakes; pasta; pies; pizza; popcorn; puddings; quiche; relish [condiment]; sandwiches; sauces [condiments]; muesli; muesli bars; muesli snacks; oat-based food; rice cakes; rice crackers; almond paste; barley meal; bean meal; soya bean paste [condiment]; capers; chips [cereal products]; cooking salt; corn flakes; corn flour; corn, milled; couscous [semolina]; custard; custard powder; seasonings*;

¹ A corporation organized and existing under the laws of South Africa, with principal office at Glacier Place, 1 Sportica Crescent, Tygervalley, 75330, South Africa.

² With address at 121 Carbine Road, Mount Wellington Auckland 1060, New Zealand.

leaven; linseed for human consumption; flavourings, other than essential oils; malt extract for food; mayonnaise; molasses for food; noodles; noodle-based prepared meals; royal jelly for culinary purposes; soya flour; soya sauce; tabbouleh; unleavened bread; fruit coulis [sauces]; rice-based snack food; wheat-based snack foods; cereal bars; high-protein cereal bars; oatmeal; oats, processed; corn chips; savoury biscuits; cookies; dressings for salad; fruit jellies [confectionery]; gingerbread" under Classes 05, 29 and 30, respectively, of the International Classification of Goods³.

The Opposer claims to be the originator, prior user and registered owner in the Philippines of the mark "CERES" which it registered for goods in Class 32 under Registration No. 11986 issued on 13 November 2006. According to the Opposer, it also registered its mark in about eighty (80) countries, territories and jurisdictions all over the world. It marketed its "CERES" products since the early 1980s and continues to use and sell its products in over eighty four (84) countries worldwide. It extensively promoted its mark internationally in various media and operates a website at www.ceres.co.za. In the Philippines, it extensively uses its mark since 2004. It thus contends that the Respondent-Applicant's mark should not be allowed for being confusingly similar to its own registered mark. In support of its Opposition, the Opposer submitted as evidence the affidavit of Jay-Ann Jacobs, with annexes⁴.

This Bureau issued a Notice to Answer dated 26 March 2015 and served a copy thereof upon the Respondent-Applicant. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 04 January 2016 Order No. 2016-001 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the trademark application by Respondent-Applicant should be allowed.

Section 123.1 (d) and (e) of the 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**

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 "C".

(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;

xxx."

In this regard, with respect to the Opposer's claim that its mark is a well-known mark, the Opposer did not submit evidence to show that all or a combination of the criteria under Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Tradenames and Marked or Stamped Containers concur.

Nevertheless, the records reveal that at the time Respondent-Applicant filed for an application of registration of its mark "CERES" on 19 Jun2 2013, Opposer has an existing and valid registration of its trademark "CERES" under Registration No. 11986 issued on 13 November 2006.

To determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the two are shown below for comparison:

CERES

Opposer's Mark

Ceres

Respondent-Applicant's Mark



The prevalent feature of the competing marks is the word Ceres. The addition of a leaf device by the Respondent-Applicant, notwithstanding, the competing marks remain visually and aurally similar. 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.⁵

⁵ Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

Succinctly, since the Respondent-Applicant will use or uses the mark "CERES" to goods that are similar and/or closely related to that of Opposer's registered mark, any slight differences in presentation will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. The Opposer's registration covers "*mineral and aerated waters and other alcoholic drinks; fruit or vegetable drinks and fruit or vegetable juices; syrups and other preparations for making beverages*", which are closely related, if not similar, to the food products, especially those which are fruit-based, in which the Respondent-Applicant's uses its mark. These goods involved are ordinary grocery items that flow in the same channels of trade. The target market thereof is not expected to be discriminating and cautious as those buying expensive products. Aptly, the Supreme Court in the case of **Del Monte Corporation vs. Court of Appeals**⁶, thus:

"We also note that the respondent court failed to take into consideration several factors which should have affected its conclusion, to wit: age, training and education of the usual purchaser, the nature and cost of the article, whether the article is bought for immediate consumption and also the conditions under which it is usually purchased. Among these, what essentially determines the attitude of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation. But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement are bought by the casual consumer without great care. In this latter category is catsup."(Emphasis supplied.)

Therefore, it is highly probable that the purchasers will be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.⁷ It would appear that as a consequence of this discourse, there still remains hanging in mid-air the unanswered puzzle as to why an aspiring commercial enterprise, given the infinite choices available to it of names for the intend product, would select a trademark or tradename which somewhat resembles an existing emblem that had established goodwill.⁸

⁶ G.R. No. L-78325, 25 January 1990.

⁷ Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

⁸ Fat'erge, Inc. vs. The Intermediate Appellate Court, G.R. No. 71189, 04 November 1992.

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

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. The latter was given ample opportunity to defend its trademark application but Respondent-Applicant did not bother to do so.

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. M/0000/01174085 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 11 April 2016.


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

⁹ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

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