

KWIK LOK CORPORATION,
Opposer,

-versus-

LALWANI K. DINESH,
Respondent - Applicant.

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} **IPC No. 14-2015-00366**
} Opposition to:
} Appln. Serial No. 4-2014-00505540
} Date Filed: 24 November 2014
} **TM: "CLIPLOC"**
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NOTICE OF DECISION

SAPALO VELEZ BUNDANG BULILAN
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LALWANI K. DINESH
Respondent-Applicant
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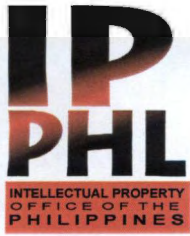
GREETINGS:

Please be informed that Decision No. 2016 - 181 dated June 22, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 22, 2016.

For the Director:

MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



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TM: "CLIPLOC"

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Decision No. 2016- 181

DECISION

KWIK LOK CORPORATION ¹ ("Opposer"), filed an opposition to Trademark Application Serial No. 4-2014-00505540. The application, filed by LALWANI K. DINESH² ("Respondent-Applicant"), covers the mark "CLIPLOC" for use on "*bag clips made of plastic to be used at home*" under Class 20 and "*plastic household goods to be used to seal and store items*" under Class 21 of the International Classification of Goods.³

The Opposer alleges the following grounds:

"1. Opposer is the first to adopt use and register the KWIK LOC trademark for its goods falling under Class 20 in various countries worldwide, including the Philippines and therefore enjoys under Section 147 of Republic Act (R.A.) No. 8293 for the right to exclude others from registering or using an identical or confusingly similar mark such as Respondent-Applicant's 'CLIPLOC' mark.

"2. There is a likelihood of confusion between Opposer's 'KWIK LOC' trademark and Respondent-Applicant's 'CLIPLOC' mark because the latter's mark is confusingly identical in sound, spelling, appearance and meaning to the former's 'KWIK LOC' trademarks. Moreover, Respondent-Applicant's use of the 'CLIPLOC' mark for the goods under classes 20 and 21 will dilute the distinctiveness and erode the goodwill of Opposer's 'KWIK LOC' trademarks, which are arbitrary trademarks when applied to Opposer's products and services.

"3. The Opposer's 'KWIK LOC' trademarks are well-known internationally and in the Philippines, taking into account the knowledge of the public at large, as being trademarks expressly and directly referring to and owned by the Opposer, hence, the Respondent-Applicant's 'CLIPLOC' mark cannot be registered in the Philippines pursuant to the express provision of Section 147.2 of R.A. No. 8293. No doubt, the use of Respondent-Applicant's

¹ A corporation organized and existing under the laws United States of America.

² An Indian national with address at 1973 Spring Street, San Miguel Village, Brgy. Poblacion, Makati City.

³The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.

'CLIPLOC' mark for his/her goods will certainly cause confusion, and indicate a connection between its products and the Opposer's products and services. Likewise, the interests of the Opposer are likely to be damaged by Respondent-Applicant's use of the 'CLIPLOC' mark.

"4. The Respondent-Applicant, by using 'CLIPLOC' as its mark will give his/her goods the general appearance of Opposer's goods, which would likely influence purchasers to believe that his/her 'CLIPLOC' bags and closures are supervised and authorized by the Opposer of its legitimate trade, hence, he/she is guilty of unfair competition as provided in Section 168.3 of R.A. No. 8293.

The Opposer's evidence consists of the following:

1. Exhibit "A" - certified copy of Registration No. 4-2011-501867 for the mark KWIK LOC;
2. Exhibits "B" to "B-31" - list of registrations of KWIK LOC around the world and representative samples of these registrations;
3. Exhibits "C" to "C-105"; "D" to "D-87" and "E" to "E-87" - Catalogues of Kwik Loc for the U.S.A., Canada and Europe;
4. Exhibit "F" - Affidavit of Mr. Ignacio A. Sapalo with Annexes "A" and "B" to "B-19".

This Bureau issued on 26 November 2015 a Notice to Answer and served a copy thereof to the Respondent-Applicant on 16 December 2015. However, despite receipt of Notice, Respondent-Applicant failed to file the Answer. On 25 April 2016, this Bureau issued an Order declaring Respondent-Applicant in default. Hence, this case is submitted for decision on the basis of the opposition, the affidavits of witnesses, if any, and the documentary evidence submitted by the Opposer pursuant to Rule 2 Section 10 of the Rules and Regulations on Inter Partes Proceedings, as amended.

Should the Respondent-Applicant be allowed to register the mark **CLIP LOC**?

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.⁴

Sec. 123.1 (d) of the IP Code provides:

SECTION 123. Registrability. — 123.1. A mark cannot be registered if it:

x x x

⁴See *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 Nov. 1999.

- 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;

At the time the Respondent-Applicant filed its trademark application on 24 November 2014, Opposer already has an existing trademark registrations for the mark KWIK LOC issued on 28 June 2012. Opposer's KWIK LOC mark is used on "*bag closures and plastic fasteners for applying information tags to articles*". On the other hand, Respondent-Applicant's mark will be used on *bag clips made of plastic to be used at home and plastic household goods to be used to seal and store items*". It appears that the parties' goods are similar and/or related.

But, are the competing marks, shown below, resemble each other such that confusion or even deception is likely to occur?

KWIK LOK

Opposer's Mark

CLIPLOC

Respondent-Applicant's Mark

Confusion is likely in this instance because of the resemblance of the competing trademarks. Both marks contain the seven (7) letters "K-W-I-K-L-O-K" and "C-L-I-P-L-O-C". While the letters that comprises the respective marks of the parties are different except in the letters "I", "L" and "O" and shape device that encloses the word "CLIPLOC", these differences, however, are very trivial so as to avoid the likelihood of confusion because when the marks are pronounced, they produce the same or similar sounds.

Trademarks are designed not only for the consumption of the eyes, but also to appeal to the other senses, particularly, the faculty of hearing. Thus, when one talks about the Opposer's trademark or conveys information thereon, what reverberates is the sound made in pronouncing it. When Respondent-Applicant's mark is pronounced, the sound of Opposer's KWIK LOK mark is practically replicated. Similarity of sound is sufficient ground to rule that two marks are confusingly similar when applied to merchandise of same descriptive properties. In fact, the Supreme Court has in many cases took into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity. In *Marvex Commercial Co., Inc. v Petra Hawpia & Co., et al.*⁵, the Court held:

The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, *Unfair Competition and Trade Marks*, 1947, Vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop";


⁵ G.R. No. L-19297. December 22, 1966 cited in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993. August 18, 2004.

"Jantzen" and "Jass-Sea"; "Silver Flash" and "Supper Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo." Leon Amdur, in his book "Trade-Mark Law and Practice," pp. 419-421, cites [sic], as coming within the purview of the idem sonans rule, "Yusea" and "U-C-A," "Steinway Pianos" and "Steinberg Pianos," and "Seven-Up" and "Lemon-Up." In *Co Tiong vs. Director of Patents*, this Court unequivocally said that "Celdura" and "Condura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin," as the sound of the two names is almost the same.

Accordingly, since Respondent-Applicant's mark is confusingly similar to Opposer's mark KWIK LOK, its registration is proscribed by Sec. 123.1 (e) of the IP Code.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2014-00505540, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

Taguig City 22 JUN 2016


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