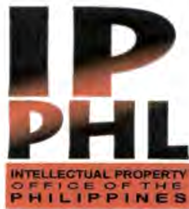

ABS-CBN CORPORATION, *Opposer,*	}	**IPC No. 14-2014-00036** Opposition to:
	}	
-versus-	}	Appln. Serial No. 4-2013-003075 Date Filed: 20 March 2013
ABC DEVELOPMENT CORPORATION, *Respondent-Applicant.*	}	**TM: JEEPNEY JACKPOT PERA O PARA LOGO**

x---x

NOTICE OF DECISION

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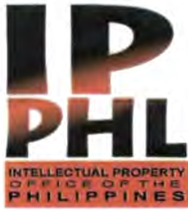
SABRINA KATE PANEL-MONTIEL
AVP-Legal Services of Respondent-Applicant
ABC DEVELOPMENT CORPORATION
Respondent- Applicant
762 Quirino Highway
San Bartolome, Novaliches
Quezon City

GREETINGS:

Please be informed that Decision No. 2016 - 290 dated August 22, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, 22 August 2016.

Atty. Z'SA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs



ABS-CBN CORPORATION, Opposer,	IPC No. 14-2014-00036
-versus-	Opposition to Trademark Application No. 4-2013-003075 Date Filed: 20 March 2013
ABC DEVELOPMENT CORPORATION, Respondent-Applicant. x -- x	Trademark: **"JEEPNEY JACKPOT PERA O PARA LOGO"** Decision No. 2016-290

DECISION

ABS-CBN Corporation[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-003075. The contested application, filed by ABC Development Corporation[2] ("Respondent-Applicant"), covers the mark "JEEPNEY JACKPOT PERA O PARA LOGO" for use on *"entertainment services"* under Class 41 of the International Classification of Goods[3].

According to the Opposer, it is one of the leading radio broadcasting companies (DZMM), operating eighteen (18) radio stations throughout keys cities in the Philippines. It also owns the country's leading cinema and music production and distribution outfits. The Opposer and its affiliates provide news and entertainment programming for eight cable and two free-to-air channels. They also have interests in content development and production, cable and satellite television services, merchandising and licensing, mobile and online multimedia services, glossy magazine publishing and video and audio posit production, all of which complement and enhance its strength in content production and distribution.

Sometime in early 2012, the Opposer came up with "JEEPNEY TV", a cable channel solely dedicated to re-airing of its self-produced television shows. It envisioned a jeepney, being the most popular mode of transportation in the Philippines with deep historical and cultural relevance, as a time machine that would take viewers a journey back in time. On 21 June 2012, it filed a trademark application for "JEEPNEY TV", which was granted on 03 January 2013. On 01 October 2012, it started the test broadcast of "JEEPNEY TV", which it owned and is being operated by its subsidiary, Created Programs, Inc. ("CPI"). Thereafter on 22

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[1] A domestic corporation with address at ABS-CBN Broadcast Center, Sgt. Esguerra cor. Mother Ignacia St., Diliman, Quezon City.

[2] With known address at 762 Quirino Highway, San Bartolome, Novaliches, Quezon City.

[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.

October 2012, it formally launched the same and is currently being aired nationwide. The Opposer thus contends that it will be damaged by the registration of the Respondent-Applicant's mark "JEEPNEY JACKPOT PERA O PARA" claiming that the latter mark is confusingly similar to its registered mark "JEEPNEY TV".

In support of its opposition, the Opposer submitted the following:[4]

1. copy of its Articles of Incorporation;
2. the Respondent-Applicant's trademark application as published in the IPO E-Gazette;
3. copy of Order No. 2014-206;
4. copy of Order No. 2014-302;
5. its Annual Report for 2012;
6. notarized affidavit of Carminda M. de Leon, channel head of Jeepney TV;
7. certified true copy of Certificate of Registration No. 4-2012-007442; and
8. certified true copy of the Articles of Incorporation of CPI.

A Notice to Answer was issued and served upon the Respondent-Applicant on 24 April 2014. The latter, however, did not file Answer. Thus, the Hearing Officer issued Order No. 2015-482 on 24 March 2015 declaring the Respondent-Applicant in default and the case submitted for resolution.

The issue to be resolved is whether the Respondent-Applicant should be allowed to register the mark "JEEPNEY JACKPOT PERA O PARA LOGO" in its favor.

Records reveal that at the time the Respondent-Applicant filed the contested application on 20 March 2013, the Opposer has previously filed a trademark application for "JEEPNEY TV" on 21 January 2012 for use on *"entertainment"* under Class 41. The Opposer was eventually issued Certificate of Registration No. 4-2012-007442 on 03 January 2013.

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

[4] Marked as Exhibits "A" to "H".

Jeepney TV

Opposer's mark | *Respondent-Applicant's mark*

A practical approach to the problem of similarity or dissimilarity is to go into the *whole* of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of a prospective buyer. The trademark complained of should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. Some such factors as "sound; appearance; form, style, shape, size or format; color; ideas connoted by marks; the meaning, spelling, and pronunciation, of words used; and the setting in which the words appear" may be considered.[5] Thus, confusion is likely between marks only if their over-all presentation, as to sound, appearance, or meaning, would make it possible for the consumers to believe that the goods or products, to which the marks are attached, emanate from the same source or are connected or associated with each other.

The only similarity between the two marks is the word "JEEPNEY". Such similarity, however, is not sufficient to conclude that confusion is likely to occur. The word "JEEPNEY" is a common English word which pertains to a mode of transportation in the Philippines and therefore, widely used by and familiar to Filipinos. Therefore, what will determine whether the marks are confusingly similar are the words and/or figures that accompany the said common word. In this case, the similar appropriation of the word "JEEPNEY" pales in significance when the competing marks are considered in their entirety. It is highly unlikely that one who encounters "JEEPNEY TV" will affiliate or at least be reminded of "JEEPNEY JACKPOT PERA O PARA LOGO"; and vice-versa. To allow the opposition on the ground of the similar use of the word "JEEPNEY" is tantamount to unduly giving the Opposer the monopoly over the said common word with respect to entertainment services such that other television and/or radio stations can no longer use the said common word in shows and programs.

[5] Etepha A.G. vs. Director of Patents, G.R. No. L-20635, 31 March 1966.

Corollarily, Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("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***
> ***(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion; xxx"*** (Emphasis supplied.)

Similarly, Section 147 states that:

> ***"Section 147. Rights Conferred. - 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed."*** (Emphasis supplied.)

Noteworthy, the target market of both marks is viewers who are discriminating in their choices of television and/or radio stations and shows. Cast in this particular controversy, the ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. The definition laid down in Dy Buncio v. Tan Tiao Bok is better suited to the present case. There, the "ordinary purchaser" was defined as one "accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The simulation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase.[6]

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

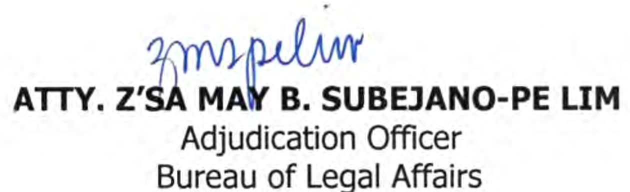
[6] Victorio P. Diaz vs. People of the Philippines, G.R. No. 180677, 18 February 2013.

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.[7] In this case, the Respondent-Applicant's mark sufficiently met this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application No. 4-2013-003075 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 22 AUG 2016



ATTY. Z'SA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs

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