

ASTON MARTIN LAGONDA,
Opposer,

-versus-

QSJ MOTORS PHILS., INC.,
Respondent- Applicant.

X-----X

} **IPC No. 14-2014-00271**
}
} Opposition to:
} Appln. Serial No. 4-2013-015085
} Date Filed: 22 July 2011
} **TM: "T- KING"**
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}
}
}

NOTICE OF DECISION

FEDERIS & ASSOCIATES LAW OFFICES
Counsel for the Opposer
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141 Valero Street, Salcedo Village
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QSJ MOTORS PHILS., INC.
Respondent- Applicant
788-B1 Apo Road corner Fil-Am Friendship Hi-Way
Sto. Domingo, Angeles City
Pampanga

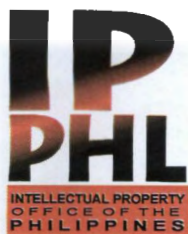
GREETINGS:

Please be informed that Decision No. 2016 - 65 dated March 03, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 03, 2016.

For the Director:

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



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-versus-

QJS MOTORS PHILS., INC.,

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IPC No. 14-2014-00271

Opposition to:

Serial No. 4-2013-015085

Date Filed: 22 July 2011

Trademark: **"T-KING"**

Decision No. 2016- 65

DECISION

Aston Martin Lagonda¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-015085. The contested application, filed by QJS Motors Phils., Inc.² ("Respondent-Applicant"), covers the mark "T-KING" for use on *"automated hydro-trust cleaning units for pipelines, load sensing valve, brake cam shaft, relay valve, starter alternators, transmission gear, oil seal cab lifting cylinder, seal components, tilt cab fuel pump", "hand tools and implements (hand-operated) as far as included in class 8 only", "unloading valve, auto lamp hi, central electricity distribution box, wiring harness, sensor, switch, electromagnetic valve, controller, electro motion lifter, instrument board, relay, heating systems", "air conditioner, air dryer" and "light truck, mini truck, CKD truck, van truck, stake truck, fire truck, tractor truck, tow truck, refrigerator truck, truck wheel, flatbed truck, truck mounted crane, fuel/oil truck, cement truck, aluminum van, bulk cement carrier, car, cargo truck, dump truck, oil truck, refuse truck, tractor head, transit mixer, parts and fittings thereof of the foregoing, namely, brake drum, spring brake chamber, brake assembly, steering wheels, steering tie rod, steering oil reservoir, steering shift device, steering pitman arm, power steering pump, steering assembly, auto horn, clutch driven plate, clutch pressure plate, clutch housing, clutch master cylinder, clutch booster, transmission shaft, truck tube steel wheel rims, truck demountable rim, balance shaft and bracket, differential, axle shaft shaft, shock absorber, cross axle, crown wheel pinion, drive-driven idle gear, tandem axles, wheel hub, tire, reducer, epicycle gear, bushing, bearing, truck cab, dashboard, truck doors, glass windows for vehicles, windscreen wiper systems, bumper, mud guard, auto mirror, truck cab sleeper, truck seats, brake valve"* under Classes 07, 08, 09, 11 and 12, respectively, of the International Classification of Goods³.

¹ A corporation duly organized and existing under and by virtue of the laws of United Kingdom with principal address at Banbury Road, Gaydon Warwick CV65 0DB, United Kingdom.

² With office address at 788-B1 Apo Road Corner FilAm Friendship Hi-Way, Sto. Domingo, Angeles City, Pampanga, Philippines.

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.

Republic of the Philippines

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The Opposer alleges, among others, that it is a British manufacturer of luxury sport cars founded in 1913 by Lionel Martin and Robert Bamford. According to the Opposer, Martin joined a race in Aston Hills and after a couple of satisfying victories in 1914, decided to build a sports car with a name to commemorate his race triumphs, "ASTON MARTIN". At present, its mark appears with a depiction of a pair of wings. The mark gradually evolved over time but the wing configuration remained the essence of the device. The Opposer currently has dealership in approximately 140 locations all over the world, is often included on "best of" lists and rankings by publications and websites with an international reach, has co-hosted, sponsored or attended many events, regularly subject of local and international press, established partnerships with several brands and appears in its own magazines, website and other social media.

The Opposer maintains that the dominant features of its marks are the words "ASTON MARTIN" and the wing device. It claims to have numerous pending applications and registrations in various jurisdictions. In the Philippines, it was issued Certificate of Registration Nos. 4-2013-009326 and 4-2013-009324, both issued on 16 January 2014, for goods under Classes 9, 12 and 37. The Opposer argues that the Respondent-Applicant adopts the image of a pair of wings that make up the essence of its mark. It contends that the mark "T-KING" should not be allowed especially that the application is in connection with goods and services under common classes. In support of its Opposition, the Opposer submitted the following as evidence:⁴

1. affidavit of Michael Francis Marecki, General Counsel and Company Secretary of the Opposer;
2. database listing of registered and pending trademarks covering "ASTON MARTIN" brand and the wings device owned by the Opposer;
3. screenshots of <http://www.astonmartin.com.com/>;
4. printouts of its social media accounts;
5. printouts from different articles in publications such Top Gear, AutoCar, EVO, Car Magazine, Auto Express and other publications in Asia;
6. samples of its magazine, AM magazine;
7. representative samples of advertising materials;
8. printout from www.boxofficemojo.com showing the gross sales of "Skyfall", which was released on 31 October 2012 in the Philippines;
9. certified true copies, with legalized certification of Steven John Jennings, of some of the Opposer's certificates of registrations;
10. affidavit of Diana F. Rabanal;
11. certified true copies of Certificate of Trademark Registration Nos. 4-2013-009326 and 4-2013-009324; and

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

12. printouts of websites discussing and reviewing the Opposer and its products and services.

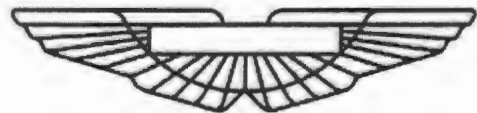
A Notice to Answer was issued and served upon the Respondent-Applicant on 25 September 2014. The latter, however, did not file an Answer. Thus, on 06 February 2015, the Hearing Officer issued Order No. 2015-242 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved is whether the Respondent-Applicant's mark "T-KING" should be allowed registration.

The records show that at the time the Respondent-Applicant filed its trademark application, the Opposer already has a pending application of its marks "ASTON MARTIN" and "No Verbal Elements" filed on 06 August 2013. The Opposer was eventually issued registration on 16 January 2014 for the said marks under Certificates of Registration Nos. 4-2013-009326 and 4-2013-009324.

But are the competing marks, as shown below, confusingly similar?

ASTON MARTIN



Opposer's marks



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 mark "T-KING" mark is obviously different and distinct from the mark "ASTON MARTIN". As to the mark "No Verbal Elements" and the subject mark, the only manifest similarity is that they both appropriate a wing device. Such similarity, however, is not sufficient to conclude that confusion is likely to occur. The consumers can easily distinguish the two marks. The presentations of the wings are different as that of the Opposer's consist of straight and sharp lines. The Respondent-Applicant's mark, on the other hand is composed of curved and rounded edges. In addition, the latter employs a T figure in between the pair of wings and the use of color blue. More importantly, the latter's competing logo is with the word "T-KING", thus making the confusion even more unlikely.

Moreover, the Trademark Registry of this Office reveals several other trademarks involving vehicles and/or automobiles that likewise employ wings in their trademarks, belonging to different proprietors, including:



Reg. No. 4-2013-501959



Reg. No. 4-1997-120677

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



Reg. No. 4-2009-002649

Hence, similarity in this aspect alone is not enough to prevent a junior user registration of its mark provided that the later mark is endowed with other distinguishing features and characteristics such as that of the Respondent-Applicant's. Further noteworthy, the competing companies are engaged in vehicles and/or automobile business and thus, their target market is discerning consumers knowledgeable of the properties involved as well as the companies they deal with making confusion, much more deception, improbable.

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.⁶ In this case, the Respondent-Applicant's mark met this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2014-015085 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 03 March 2016.


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

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