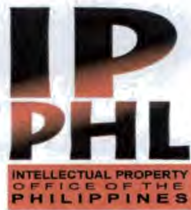

AIRBNB, INC.,	}	**IPC No. 14-2015-00325**
Opposer,	}	Opposition to:
	}	Appln. Serial No. 4-2015-00004183
	}	Date Filed: 20 April 2015
-versus-	}	**TM: "AIRLOFT"**
	}	
	}	
	}	
ARTHUR R. CANTOR,	}	
Respondent- Applicant.	}	

x---x

NOTICE OF DECISION

BARANDA & ASSOCIATES
Counsel for the Opposer
Suite 1002-B Fort Legend Towers
3rd Avenue corner 31st Street
Bonifacio Global City, Taguig City

SOLIS MEDINA LIMPINGCO & FAJARDO LAW OFFICE
Respondent-Applicant's Representatives
11th Floor, East Tower PSE Centre
Exchange Road, Ortigas Business Center
Pasig City

GREETINGS:

Please be informed that Decision No. 2016 - 257 dated July 20, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 20, 2016.

For the Director:

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

AIRBNB, INC.,
Opposer,

-versus-

ARTHUR CANTOR,
Respondent-Applicant.
x ---x

IPC No. 14-2015-00325
Opposition to Trademark
Application No. 4-2015-004183
Date Filed: 20 April 2015
Trademark: **"AIRLOFT"**

Decision No. 2016- 257

DECISION

Airbnb, Inc.[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2015-004183. The contested application, filed by Arthur Cantor[2] ("Respondent-Applicant"), covers the mark "AIRLOFT" for use on *"services for providing temporary accommodation"* under Class 43 of the International Classification of Goods[3].

The Opposer alleges, among others, that it traces its roots in 2007 when Joe Gebbia and Biran Chesky, who were both struggling to pay their rent, decided to lease their living room by providing air mattresses and cooking breakfast for their guests during a design conference in San Francisco. Realizing the potential of their new business model, they asked Nathan Blecharezyk, a Harvard University graduate who used to be Gebbia's roommate, to build the website www.airbedandbreakfast.com. The listings in its website exponentially grew throughout the years. It has significant international presence with over 1.5 million listings worldwide in almost two hundred (200) countries. The first Filipino user who signed up and created an account was recorded to be on 19 October 2009. The first official "AIRBNB" user in the Philippines was on 07 June 2013 in Boracay.

According to the Opposer, it changed its domain name to www.airbnb.com on 04 March 2009. It extensively advertised and promoted the mark on various media. It has also been repeatedly recognized as a global leader in this platform. The "AIRBNB" mark was first filed on 26 April 2010 and registered on 30 April 2013 in United States of America (USA). The mark was first used on 04 March 2009. In the Philippines, the mark was registered on 18 September 2012 under Certificate of Registration No. 4-2012-005368 for Classes 36, 39 and 43. It also has another pending application for Classes 09 and 42. It believes that the Respondent-Applicant's mark "AIRLOFT" is confusingly similar to its registered mark. In support

[1] A corporation organized and existing under the laws of United States of America (USA), with principal office at 888 Brannan Street, Fourth Floor, San Francisco 94103, California, USA.
[2] With known address at 21 Begonia Street, Tahanan Village, Parañaque City, Metro Manila.
[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.

of its opposition, the Opposer submitted the affidavit of its product counsel, Jennifer Lam, with annexes.[4]

This Bureau issued and served a Notice to Answer upon the Respondent-Applicant on 17 September 2015. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 06 April 2016 Order No. 2016-538 declaring the Respondent-Applicant in default and the case submitted for decision.

Should the Respondent-Applicant be allowed to register the trademark "AIRLOFT"?

Records reveal that at the time Respondent-Applicant applied for registration of the mark "AIRLOFT" on 20 April 2015, the Opposer already registered the mark "AIRBNB" marks on 18 September 2012. Thus, the Opposer's registration of the mark "AIRBNB" preceded the application for registration by the Respondent-Applicant of the mark "AIRLOFT". What is left to be determined is whether the competing marks, as depicted below, are confusingly similar:

AIRBNB	Airloft
Opposer's marks	*Respondent-Applicant's mark:*

Perusing the contending marks, it is manifest that both consist of the prefix "AIR" compounded with another word. However, the substitution by the word "LOFT" in the Respondent-Applicant's mark for the "BNB" in the Opposer's makes little difference, if at all, in eliminating the possibility of confusion between the marks. Firstly, the word "AIR", although a common English word, has no connection whatsoever to temporary accommodations. As such, the word distinctive for the services involved. Secondly, the word "BNB", which stands for "bed and breakfast", has the same connotation with the word "LOFT". Therefore, they make a similar impression in the eyes and mind of the consuming public. 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

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

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]

The similar use of the prefix "AIR" followed by another word which pertains to accommodations both parties intensifies the likelihood that the consumers will have the impression that the services covered by the marks originate from a single source or origin. This is especially because the Opposer's registered mark "AIRBNB" also covers temporary lodging under Class 42, which is similar, if not the same, to the service covered by the Respondent-Applicant's mark "AIRLOFT. It only follows that they have the same target market and that they flow in the same channels of trade. Succinctly, confusion or mistake subsists not only on the purchaser's perception of the services but also on the origin thereof as held by the Supreme Court in **Skechers, U.S.A., Inc. vs. Interpacific Industrial Trading Corp.**[6], to wit:

> ***"Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, viz.: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent."***

Finally, it is emphasized that the function of 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.[7] The Respondent-Applicant's mark failed to meet this function.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), which provides that that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion.

---

[5] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.
[6] G.R. No. 164321, 23 March 2011.
[7] Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 November 1999.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2015-004183 is hereby **SUSTAINED.** Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 JUL 2016

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