

COMITE INTERNATIONAL OLYMPIQUE
(International Olympic Committee-IOC,)
Opposer,

-versus-

JUANITO B. GERVASIO,
Respondent-Applicant.

IPC No. 14-2011-00240

Opposition to:
 Appln. Serial No. 4-2010-011909
 Date Filed: 03 November 2010

**TM: OLYMPIC VILLAGE
 & DEVICE**

X-----X

NOTICE OF DECISION

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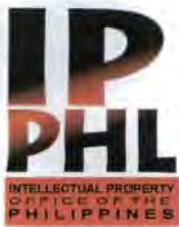
GREETINGS:

Please be informed that Decision No. 2016 - 491 dated 29 November 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHEL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 29 November 2016.

MARILYN F. RETUTAL
 IPRS IV
 Bureau of Legal Affairs



COMITE INTERNATIONAL OLYMPIQUE
(International Olympic Committee-IOC),
Opposer,

-versus-

JUANITO B. GERVASIO,
Respondent.

IPC No. 14-2011-00240

Opposition to:
Appln. No. : 4-2010-011909
Date Filed : 3 November 2010
TM : "OLYMPIC VILLAGE &
DEVICE
Decision No. 2016 - 431

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DECISION

Comite International Olympique (International Olympic Committee - IOC) ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2010-011909. The application filed by JUANITO B. GERVASIO ("Respondent-Applicant")² covers the mark "OLYMPIC VILLAGE & DEVICE" for use on "Retail ATH - Leisure Specialty Store" under Class 35 of the International Classification of Goods and Services.³

The Opposer alleges that it is the first to adopt, use and register the "OLYMPIC" and "OLYMPIC and RING DESIGN" trademarks and their variations/derivatives for its goods/services falling under Classes 1-45 in various countries worldwide including the Philippines and enjoys under the Nairobi Treaty on the Protection of Olympic Symbol (1981) and the Republic Act No. 8293. Opposer claims that there is a likelihood of confusion between the Opposer's "OLYMPIC" trademarks and Respondent-Applicant's "OLYMPIC VILLAGE & DEVICE" mark because the latter's mark is identical in sound, spelling, appearance and meaning to the former's "OLYMPIC" trademarks. According to Opposer, the use by Respondent-Applicant of its mark "OLYMPIC VILLAGE & DEVICE" will give its products and services the general appearance of Opposer's related products and services, which would likely influence purchasers to believe that "OLYMPIC VILLAGE & DEVICE" products and services are supervised and authorized by the Opposer. Opposer also posits that by adopting the "OLYMPIC VILLAGE & DEVICE" mark for "retail ath-leisure specialty store" in class 35, it will likely cause confusion, mistake or deception as to affiliation, connection or association with Opposer. Opposer also claims that its "OLYMPIC" trademarks are well-known in the Philippines and internationally.

Opposer's evidence consists of the following:

Exhibits "A" to "A - 5" - details of registration issued by the IPO;

¹ A Swiss Association organized, existing and in good standing under the laws of Switzerland with principal office at Chateau de Vidy 1007 Lausanne Switzerland.

² With address at 39th Floor, Summit One Office Tower, 530 Shaw Blvd., Mandaluyong 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.

Exhibit "B" - Opposer's list of registration for the "Olympic" marks;
Exhibit "C" series and "D" series - advertisements, promotions, newspapers, magazine and other publications around the world, worldwide licenses, excerpt of marketing Report Sydney;
Exhibit "E" series - Opposer's documentation relating to financial assistance by means of the Olympic Solidarity.

On 25 October 2011, Respondent-Applicant filed his Verified Answer stating that Opposer failed to allege its personality to sue in the Verified Notice of Opposition. Respondent-Applicant also avers that Opposer has no exclusive right to the word "OLYMPIC" and that Respondent-Applicant has the right to use the words "OLYMPIC VILLAGE" as his mark in the Philippines.

The Respondent-Applicant's evidence consists of the following:

Exhibit "1" - Certified copy of OVEI's Articles of Incorporation;
Exhibit "2" - Copy of business name registration for OVEI's "Olympic Village" stores issued by the DTI;
Exhibit "3" - Affidavit Direct Testimony of JUANITO B. GERVASIO;
Exhibit "4" - Copy of Certificate of Reg. No. 58109 for the mark "Olympic Village" in class 25 in the name of Respondent-Applicant issued on May 12, 1994;
Exhibit "5" - Copy of Declaration of Actual Use for Reg. No. 58109 for the mark "Olympic Village";
Exhibit "6" - Copy of the "Olympic Village Basic Visual Identity Guide";
Exhibit "7" - Complete list of "Olympic Village" stores locations;
Exhibit "8" - Complete list of brands carried by "Olympic Village" stores;
Exhibit "9" - Copy of NGO launches drive to give kids hope through sports;
Exhibit "10" - Article published on page A-27 of the Philippine Star on 10 May 2010;
Exhibit "11" - Article published on page 15 of the Freeman on 11 May 2010;
Exhibit "12" - Article posted on Inquirer on 13 May 2010;
Exhibit "13" - A printout of Microsoft Executive gives Kids Hope through sports;
Exhibit "14" - Printout of the IPO database showing the details of Application No. 4-2010-011909 for "Olympic Village & Device";
Exhibit "15" - Print Search Results;
Exhibit "16" - Affidavit of Marcus Donovan;
Exhibit "17" - Affidavit of ELEANOR YU-OCAMPO;
Exhibit "18" - Affidavit of Jane Ortega;
Exhibit "19" - Affidavit of Patricia B. Hizon;
Exhibit "20" to "30" - Copies of various newspaper and magazine articles featuring Respondent-Applicant's "Olympic Village" stores;

Should the Respondent-Applicant's OLYMPIC VILLAGE trademark be allowed registration?

It is emphasized that the essence of trademark registration is to give protection to the owner of the 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 manufacture against and sale of an inferior and different article of his products.⁴

Thus, Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date in respect of the same goods or services or closely related goods or services, or if it is nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed his Trademark Application Serial No. 4-2010-011909 for the mark "OLYMPIC VILLAGE & DEVICE" on 3 November 2010, the Opposer already has an existing trademark registration for its "OLYMPIC" trademark and its variants. Among these trademarks is the mark "Olympic and Olympic Symbol" filed on 9 December 2009 which matured into Reg. No. 42009500968 on 11 November 2010 for classes 3, 9, 14, 16, 25, 28, 29, 30, 32, 35, 36, 38, 41 and 43.⁵ On the other hand, Respondent-Applicant's mark OLYMPIC VILLAGE & DEVICE is used for retail of athletic apparel and leisure specialty store under Class 35.

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

OLYMPIC

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 the 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.⁶ Thus, confusion is likely between marks only if their overall presentation as to sound, appearance or meaning would make it possible for consumers to believe that the goods or products, to which the marks are attached, comes from the same source or are connected or associated with each other.

Respondent-Applicant's mark is different and distinct from Opposer's mark. Opposer's mark consists merely of the word OLYMPIC written in simple upper case letters. In contrast, Respondent-Applicant's mark consists of an oval and a triangle to represent the letters "O" for Olympic and "V" for Village in colors orange and green and below the device are the words Olympic Village written in

⁴ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 115508, 19 November 1999

⁵ Exhibits "A" to "A - 5"

⁶ *Etiepha A.G. v. Director of Patents*, G.R. No. L-20635, 31 March 1966.

310

upper case Fritz Quadrata font. Because of these noticeable differences observed in the respective marks, Respondent-Applicant's mark cannot be said to be confusingly similar to Opposer's even if Respondent-Applicant also uses the word Olympic as part of its mark. Also, based on the Trademark Register of this Office, the word OLYMPIC has not been exclusively registered to Opposer. As such, the use of the word Olympic in Respondent-Applicant's mark will NOT likely cause confusion, mistake or deception on the part of the public.

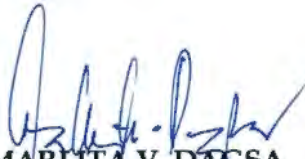
Furthermore, the claim of Opposer that Respondent-Applicant used the word OLYMPIC as part of its mark to ride on the popularity of Opposer's mark is unmeritorious. The records will show Respondent-Applicant started their business way back in 1991. In November of the same year, he applied for registration of the mark OLYMPIC VILLAGE & DEVICE for use on goods under Class 25 such as shoes, slippers and sandals. In 12 May 1994, it was granted registration. Since then, Respondent-Applicant has been using the mark in his business. As a result, it gained its own reputation and popularity. As such, it cannot be said that Respondent-Applicant is using the mark to ride on the popularity of Opposer.

Aptly, 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.⁷ Respondent-Applicant's mark met this function.

WHEREFORE, premises considered, the instant opposition is hereby *DISMISSED*. Let the filewrapper of Trademark Application Serial No. 4-2010-011909, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City 29 NOV 2016


MARLITA V. DAGOSA
Adjudication Officer
Bureau of Legal Affairs

⁷ Pribhdas J. Mirpuri v. Court of Appeals, G. R. No. 114508, 19 Nov. 1999.