

**LE COMITE INTERPROFESSIONEL VIN
DE CHAMPAGNE (C.I.V.C.),**

Opposer,

-versus-

RED LOGO LIFESTYLE, INC.,

Respondent-Applicant.

X-----X

IPC No. 14-2012-00280

Opposition to:

Appln. Serial No. 4-2012-000197

Date Filed: 06 January 2012

TM: CHAMPAGNE BUBBLY

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 440 dated 02 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL 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, 05 December 2016.

MARILYN F. RETUAL

IPRS IV

Bureau of Legal Affairs

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Decision No. 2016- 440

DECISION

Le Comité Interprofessionnel Du Vin De Champagne¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-000197. The contested application, filed by Red Logo Lifestyle, Inc.², ("Respondent-Applicant") covers the mark "CHAMPAGNE BUBBLY" for the use on *perfumery products namely, perfumes (roll-on, in-spray, in cake and/or spray), colognes, toilet water, edt; skin products namely lotions, moisturizers, oils, astringents, toners, soaps; lathering and sortening products for use in bath namely shaving skin lotions, bath and body gel, body wax, soaps, liquid soaps, bar soaps, shampoos, and shaving creams and, toothpaste; cosmetics; make-up; face powder; foundation; lipstick; lip gloss; lip shimmer; lip liner; blush on; cheek tint; eye shadow; eye liner; eyebrow pencil; toilet products against perspiration namely deodorants (roll-on, body spray, and/or cake form), talcum powder, baby powder, powder with cornstarch; hair care products namely hair dyes, hair gels, hair colors, henna, and hair wax; powder; eye cream, concealer, mascara and nail polish* all under Class 03 of the International Classification of Goods.³

The Opposer anchors its opposition on Sections 123.1 (a) and (g) and 165.2 (a) and (b) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") and Article 22 of the World Trade Organization Trade-Related Aspects of Intellectual Property Rights Agreement ("TRIPS Agreement"). It is a public service body having various public authority prerogatives. It was established by the 12 April 1941 Act of the French Parliament. It alleges, among others, that membership is compulsory to all parties engaged in the production, process and trade of "CHAMPAGNE". Among its prerogatives is its entitlement to apply for

¹ A trade organization and public service body established by an Act of the French Parliament (Act of 12 April 1941), with principal address at 5, rue Henry Martin, 51204, Epernay Cedex, France.

² A domestic corporation with address at LHPI Center (now Oakridge Business Park), 880 A.S. Fortuna Street, Banilad, Mandaue City, Cebu.

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.

registration of the geographical indication "CHAMPAGNE" worldwide, and to manage, promote and protect the interests of persons involved in the production of wines sold under said geographical indication. One of its main objectives is the protection and development of "CHAMPAGNE" market in general. Pursuant to this, it is entitled to investigate and verify that products sold as "CHAMPAGNE" worldwide have been wholly produced in Champagne in accordance with relevant legislations. "CHAMPAGNE" is produced within the strictly defined territory and conforms to the strict methods prescribed by the French Law and Community Regulations. The "CHAMPAGNE" production zone is defined and delimited by the law of 22nd of July 1927.

According to the Opposer, "CHAMPAGNE" is protected as a controlled appellation of origin worldwide. The use of the name "CHAMPAGNE" is strictly regulated by national laws and international conventions and is registered and/or applied as a geographical indication in some jurisdictions. It avers that the Respondent-Applicant's mark incorporates a representation of what appears to be two glasses of wine in its "CHAMPAGNE BUBBLY" products and a tagline *"A toast to the good life! Celebrate with a sparkling blend of pink rose champagne blended with rare blossoms and a hint of vanilla musk."* It likewise contends that the Respondent-Applicant, by incorporating "CHAMPAGNE", misleads the public as to the quality, characteristics and geographical origin of the goods. Also, it asserts that "CHAMPAGNE BUBBLY" is confusingly similar with its tradename "CHAMPAGNE". In support of its opposition, the Opposer submitted the affidavit of its General Director, Jean-Luc Barbier, with annexes, and copies of its geographical indication registration certificates issued in India, Indonesia, Malaysia, African countries, Panama, Dominican Republic and Thailand.⁴

For its part, the Respondent-Applicant alleges, among others, that it is an affiliate of Golden ABC, Inc., the corporation responsible for developing five well-recognized brands in the Philippine fashion retail. It is engaged in the retail business, selling men's and women's wearing apparel, and toilette/bath products, fashion accessories, and paper products bearing several trademarks in various department stores, boutiques, outlets and specialty stores nationwide. It has sixty-two (62) trademark applications and registrations before the Bureau of Trademarks.

The Respondent-Applicant contends that the Opposer's products are restricted to wines and do not cover personal care products or other goods. It also points out that the protection of "CHAMPAGNE" is limited to products produced in Champagne, France. It thus believes that the Opposer's protection of "CHAMPAGNE" is limited to wine product produced in Champagne, France. It also insist that its use of the word "CHAMPAGNE" for goods under Class 03 is arbitrary as one does not

⁴ Marked as Exhibits "C" to "U".



associate "CHAMPAGNE BUBBLY" with personal care products. It points out that the "STRAWBERRIES AND CHAMPAGNE" is registered in favour of Victoria's Secret also for goods under Class 03. The Respondent-Applicant submitted copy of its trademark application as evidence.⁵

The issue to be resolved is whether the Respondent-Applicant's mark "CHAMPAGNE BUBBLY" should be allowed registration.

Records show that the Respondent-Applicant filed an application for the mark "CHAMPAGNE BUBBLY" on 06 January 2012. The Opposer, on the other hand, has no pending application and/or registration of the mark "CHAMPAGNE" in this Office. Regardless of this fact, the Opposer is still a proper party of the opposition proceedings in view of Section 165.2 (a) of the IP Code, which provides:

"165.2.(a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties." (Emphasis supplied.)

The Opposer, therefore, has interest that may be damaged by the filing of the contested mark if found that the public may likely be confused or misled that the Respondent-Registrant's goods is in any way connected to it. Prior registration of the trade name is not a prerequisite for its protection. This is further explained by the Supreme Court, in the case of **Coffee Partners, Inc. vs. San Francisco Coffee and Roastery, Inc.**⁶, as follows:

"In Philips Export B.V. v. Court of Appeals, this Court held that a corporation has an exclusive right to the use of its name. The right proceeds from the theory that it is a fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name, or the same name with a slight variation in such a way as to induce persons to deal with it in the belief that they are dealing with the corporation which has given a reputation to the name."

But is the Opposer's tradename "LE COMITE INTERPROFESSIONEL DU VIN DE CHAMPAGNE" confusingly similar with the Respondent-Applicant's mark "CHAMPAGNE"? It is manifest that the two marks are distinct and distinguishable from each other. They obviously differ in spelling, pronunciation and connotation. As such, the similar use of the word "CHAMPAGNE" in the Opposer's trade name and the Respondent-Applicant's mark "CHAMPAGNE BUBBLY" pales in significance. More importantly, Section 165.2 (b) of the IP Code also provides that:

⁵ Marked as Exhibit "1".

⁶ G.R. No. 169504, 03 March 2010.



(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful. (Emphasis supplied.)

The Opposer uses "CHAMPAGNE" on wines and/or liquors. Not only are these obviously unrelated to perfumes and personal care products, which the Respondent-Applicant uses or intends to use its mark, the target consumers and channels of trade are different. Hence, there is no basis for the Opposer's claim of confusing similarity of its tradename and the Respondent-Applicant's mark.

For the same reason, registration of the Respondent-Applicant's mark is not a violation of Section 123.1 (a) and (g), which provides that a mark cannot be registered if it:

"(a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

x x x

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services; x x x"

Since the Opposer's liquor products and the Respondent-Applicant's personal care products are different and unrelated, there can be no false suggestion that the latter's goods are sponsored by, affiliated to or in any way connected to the former's. Nor will the public be misled as to the nature, quality, characteristics or geographical origin of the Respondent-Applicant's goods. Noteworthy, the Opposer did not present evidence that aside from wine and/or liquor, it has ventured to other products and services.

Furthermore, a very important circumstance is whether there exists likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. The "purchaser" is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. He is "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."⁷ The Opposer's target market is presumed to be discerning consumers knowledgeable and conscious of their preferences of liquors. These are not ordinary or inexpensive products that one will confuse for or affiliate with perfumes and personal care products.

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.⁸ The Respondent-Applicant's mark substantially met this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application No. 4-2012-000197 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, **02 DEC 2016**


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

⁷ Mighty Corporation vs. E. & J. Gallo Winery, G.R. No. 154342, 14 July 2004.

⁸ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.