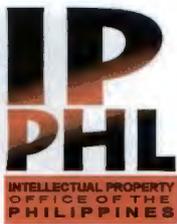


2-11-17



JAMAN PRODUCTS, INC.,
Petitioner,

-versus-

EUROBRASS PRODUCTS, INC.,
Respondent-Registrant.

IPC No. 14-2015-00433
Cancellation of:
Registration No. 4-2002-06196
Date of Registration: 08 Feb. 2004

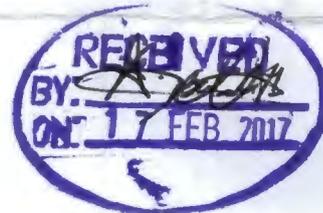
TM: JAMAN

X-----X

NOTICE OF DECISION

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5/6 RENEY VILLEZAN 02/17/17

GREETINGS:

Please be informed that Decision No. 2017 - 38 dated 15 February 2017 (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, 15 February 2017.

[Signature]
MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

JAMAN PRODUCTS, INC.,
Petitioner,

-versus-

EUROBRASS PRODUCTS, INC.,
Respondent-Registrant.

} **IPC NO. 14-2015-00433**
} Cancellation of :
} Registration No. 4-2002-06196
} Date of Registration: 8 Feb. 2004
}
} Trademark: **JAMAN**
}
}
} Decision No. 2017- 38

DECISION

JAMAN PRODUCTS, INC. (Petitioner)¹ filed a Petition for Cancellation of Registration No. 4-2002-06196. The registration, in the name of EUROBRASS PRODUCTS, INC. (Respondent-Registrant)², covers the mark “JAMAN”, for use on “all kinds of strainers (brass or cast iron)” under Class 21 of the International Classification of Goods³.

The Petitioner invokes the following legal grounds for its petition:

“(12.a) The registration of the mark has damaged, is damaging and will damage the Petitioner;

“(12.b) The registration of the mark violates Section 123.1 of Republic Act 8293 (hereafter IP Code);

“(12.b.1) Section 123.1 (d) of the IP Code states that a mark cannot be registered if it is identical to 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.

¹ A domestic corporation duly organized and existing under Philippine laws with address at No. 6 Banahaw Street, Bgy. Nagkaisang Nayon, Novaliches, Quezon City

² A corporation organized and existing under Philippine laws with address at 1836 L.M. Guerrero Street Malate, Manila

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

(12.c) Section 151. Cancellation – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- (i) Within five (5) years from the date of registration of the mark under this Act.
- (ii) At any time, if its registration was obtained fraudulently, or contrary to the provisions of this Act,
- (iv) At any time, if the registered owner of the mark without legitimate reason fails to use the mark in the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three years or longer.”

The Petitioner asserts that Respondent-Registrant’s trademark is identical/exactly similar to its JAMAN trademark and used for the same goods: strainers and/or drains (under Class 6 of the Nice Classification) and therefore likely to deceive or confusion although registered under another class (Class 21). The Petitioner believes that it will be damaged by the registration, particularly through the loss of goodwill, reputation and loss of income. It argues that the basic rule in trademark law is that in case of identical signs for identical goods or services, a likelihood of confusion shall be presumed.

According to the Petitioner, the creator, original owner/adopter, commercial user and appropriator of the JAMAN mark is Manuel Ang, Jr. The JAMAN trademark was derived from the name Manuel Ang, Jr.: the letter “J” is from Junior, “A” from Ang, and “Man” from the first three letters of his name, “Manuel”, hence, “JAMAN”. He began as a sole proprietorship welding shop metal business in Magsaysay Village Tondo in the year 1990, under the business name, Jaman Metal Craft. He was popularly known in the neighborhood as Mr. JAMAN back then and manufactured various metal products such as but not limited to, cast iron, brass floor drain, brass dome type roof drain and floor strainers of various metals. The Petitioner also alleges, among other things, that:

“22. Attached and marked xxx are original copies of the Mayor's Permit (City of Manila) and Bureau of Internal Revenue registration of Mr. Jaman's welding shop business, Jaman Metal Craft.

“23. The dates of the above PUBLIC documents pre-date the existence, operation and incorporation of Respondent Eurobrass and its use and adoption of its own Jaman trademark, subject of herein Petition for Cancellation.

“24. Various Sales Invoices and Purchase Order issued by the same Jaman Metal Craft business of Manuel Ang, Jr. providing ownership, prior commercial use, adoption and appropriation of the JAMAN mark by the creator and original owner Manuel Ang, Jr. are also herein attached.xxx

“25. The dates of the above COMMERCIAL documents pre-date the existence, operation and incorporation of Respondent Eurobrass and its

use and adoption of its own Jaman trademark under Certificate of Registration No. 4-2002-006196. xxx

“28. Around the year 1994, Ms. Ingrid Lim, Mr. Manuel Sy, Mr. Benjamin Go and Mr. Jimmy So joined Mr. Manuel Ang, Jr. in his sole proprietorship business, Jaman Metal Craft. The Latter (Manuel Ang, Jr.) continued to be the General Manager who run the day to day operation of the business.

“29. By 1998, the same group - Ms. Ingrid Lim, Mr. Manuel Sy, Mr. Benjamin Go and Mr. Jimmy So convinced the JAMAN creator, mr. Manuel Ang, Jr. to form a corporation citing the advantages of the same vis-a-vis a mere sole proprietorship.

“30. Mr. Manuel Ang, Jr. agreed with the above proposal, and thus the Respondent Eurobrass Products, Inc. was incorporated on 27 April 1998 with Ms. Ingrid Lim, Mr. Manuel Sy, Mr. Benjamin Go and Mr. Jimmy So.

“31. Said Eurobrass Products, Inc. was formed for the manufacture, sale and distribution of strainers and drains suing Mr. Ang's JAMAN trademark use under permission, sanction and allowance by said JAMAN creator, Manuel Ang, Jr. so long as he is part of the formed corporation.

“32. In the year 2001, due to irreconcilable professional differences, Mr. Manuel Ang, Jr., left Eurobrass Product, Inc. and negotiated for the sale and disposition of his shares in the company. The sale of his shares of stocks was eventually consummated in the year 2002.

“33. Mr. Ang, however, retained FULL OWNERSHIP of the brand/trademark JAMAN which is NOT PART of the sale, the same being limited to the sale of his shares of stock in the company, Eurobrass Products, Inc.

“34. To protect his JAMAN mark, Manuel Ang applied for and registered the JAMAN mark with the BOT-IPO for goods: drains, namely roof drain, floor drain, scupper drain, canopy drain and all kinds of drains under Class 6. xxx

“36. By the year 2003, Mr. Jaman (Manuel Ang, Jr.) then sixty one (61) years old and looking out for the future of his sons and daughters formed the Petitioner corporation, JAMAN PRODUCTS, INC. (JPI) current manufacturer, seller and distributor of JAMAN-branded strainers and drains. xxx

“39. Mr. Manuel Ang, Jr., eventually assigned the JAMAN trademark to Jaman Products, Inc. (where he is incorporator and director together

with his sons and daughters) by way of Deed of Assignment of the Registered Trademark duly filed and paid for with the BOT-IPO xxx

“46. Confusion of products and business has reached the point that products of the Petitioner are being mistaken as that of the Respondent; Petitioners’ clients are patronizing Respondent’s products thinking that they are buying that of Petitioner’s.”

To support its petition, the Petitioner submitted as evidence the following: Affidavit of Manuel Ang, Jr. dated 15 September; Securities and Exchange Commission (“SEC”) Articles of Incorporation and By-laws; Respondent-Registrant's Articles of Incorporation and By-laws; Respondent's Certificate of Trademark Registration of JAMAN mark; Petitioner's Certificate of Trademark Registration of JAMAN mark; Petitioner's Mayor's Permit; Bureau of Internal Revenue (“BIR”) Form 19-54 registration; Sales invoices of Jaman Metal Craft; purchase orders; representative permits, Mayor's permit, Municipal License & Regulatory Fees, BIR Form 2551 dated 1992- 1993; Municipal License Receipts dated 2004-2012; Jaman Floor drainer products (floor drain and strainer); JAMAN Certificate of Registration; letter to Escario Law Office dated 26 April 2004; Assignment of Registered Trademark; Declaration of Actual Use of Petitioner and Respondent-Registrant; Cease and Desist letter dated 15 July 2016; Reply to Cease and Desist letter.⁴

On 12 January 2015, the Respondent-Registrant filed its Verified Answer, alleging it all started as early as the 1990s when Ingrid Lim, Manuel Sy, Benjamin Go and Jimmy So (Eurobrass owners-in-interest), who are in the building and construction materials business, saw the demand for drains and strainers. They sought a welder as commission partner and found Mr. Manuel Ang, Jr., owner of a welding shop. In 1994, the Eurobrass owners-in-interest and Mr. Ang formalized their partnership. According to the Respondent-Registrant, the goods manufactured by Mr. Ang were unmarked, and it was their idea to mark the goods "Jaman". In 1998, Eurobrass owners-in-interest and Mr. Manuel Ang, Jr. formed the new corporation, Eurobrass Product, Inc. (Respondent-Registrant) that manufactured and sold Jaman branded products. During this time, Mr. Manuel Ang, Jr. only produced products under the JAMAN mark for Respondent-Registrant. Respondent-Registrant claims to have earned its goodwill and reputation as the true owner and supplier of Jaman branded goods.

The Respondent-Registrant also raised, among other things, the following defenses:

“37. The Respondent-Registrant has prior rights to the mark JAMAN as it has first registered the mark JAMAN for all kinds of drains and strainers on 8 February 2004 xxx

“38. On the other hand, the Petitioner only obtained registration for its mark JAMAN on 28 August 2004 or only 2 years after the Respondent-Registrant obtained rights to the mark JAMAN. Priority in the filing date

⁴ Exhibits "A" to "DDD" inclusive

of Petitioner's mark does not afford it prior rights. If at all, it only affords the Petitioner's mark priority in examination of the application.

"39. As it is the Respondent-Registrant who is the registered owner of JAMAN in the Philippines, it is therefore entitled to the exclusive use of the mark JAMAN under Section 138 of the IP Code xxx

"40. The Petitioner finds fault in the Nice Classification of the goods covered by the Respondent-Registrant's mark which was assigned by the Bureau of Trademarks. The Petitioner also claims that Respondent-Registrant's mark was obtained contrary to the IP Code when it cannot present evidence to support its claim.

"41. What is evident here is that the Respondent-Registrant secured the registration of the mark JAMAN for all kinds of strainers made of brass or cast iron. The fact that the goods were described to cover all kinds of strainers made of brass or cast iron shows the intention of the Respondent-Registrant to secure the registration of the mark for these goods. xxx

"43. The copies of the Declaration of Actual Use filed by the Petitioner and the Respondent-Registrant and attached to the Petition for Cancellation as Exhibits AAA and BBB clearly show that it is the Respondent-Registrant who is the prior user of the mark JAMAN for goods.

"44. The Respondent-Registrant's date of first use of the mark JAMAN is 30 September 1998 whereas the Petitioner only used the mark on 5 November 2001. This mean that the Respondent-Registrant has used the mark JAMAN 3 years prior to the Petitioner's use of the mark.

"45. The date of first use of 30 September 1998 is also consistent with the affidavit executed by Ingrid Lim for the Respondent-Registrant – that the use of the mark JAMAN started in 1998 when the Respondent-Registrant came up with the concept of using the mark JAMAN and embossing them on the goods produced by the Respondent-Registrant in partnership with Manuel Ang Jr.

"46. On the other hand, Petitioner's use of the mark JAMAN was only in 5 November 2001- this is consistent with Mr. Manuel Ang, Jr.'s affidavit. This is about the same time when Mr. Manuel Ang, Jr.'s relationship with the Respondent-Registrant turned sour in 2001 so he started using the mark JAMAN in bad faith also in 2001.

"47. Even as a corporate name, the Petitioner was only incorporated in 2003 which is also already 5 years after the Respondent-Registrant has already in 1998 openly and continuously used the mark JAMAN as a trademark.

“48. The Petitioner has admitted that the Respondent-Registrant was incorporated in 1998 and the partnership with Mr. Manuel Ang, Jr. concerning JAMAN. The Respondent-Registrant has clients dating back as early as 1998 showing proof of use of JAMAN by the Respondent-Registrant. x x x

“52. The Petitioner has not submitted proof that it has established goodwill and reputation for the mark JAMAN. This is because it is purely because of the Respondent-Registrant's efforts for over 17 years that the mark JAMAN has become known in the building and construction industry.

“53. It is the Respondent-Registrant who has obtained goodwill and reputation over the mark JAMAN for all types of strainers in the building and construction industry. xxx

“54. It is the Respondent-Registrant who has been damaged by the registration and continued use by Mr. Manuel Ang, Jr. and the Petitioner of the mark JAMAN.xxx”

“62. The Petitioner has not established why the petition for cancellation filed 14 years after the registration of the Respondent-Registrant is justified. It failed to establish how the registration of the Respondent-Registrant's mark JAMAN was registered contrary to the IP Code. xxx”

The Respondent-Registrant submitted the following as evidence: Verified Answer; Affidavit of Ingrid Lim; Power of Attorney; Secretary's Certificate; Affidavit of Ingrid Lim; Copy of Amended Articles of Incorporation; Copy of Sale of Interest, waiver and quitclaim; copy of delivery receipt and sales invoice; product catalogues with Jaman products; list of on- going and completed projects of Respondent-Registrant; sample advertising and promotional materials; flyers; calendars; directories; print-out of IPO online database showing JAMAN mark details; letter dated 12 April 2004 and 15 July 2015 addressed to William Ang.⁵

After the Preliminary Conference was terminated, the Adjudication Officer directed both parties to file their respective position papers within ten days. Both parties submitted their position papers on 16 January 2017.

Records show that at the time Respondent-Registrant filed its application for the mark JAMAN on 26 July 2002, Manuel Ang, Jr. had filed his application for the mark JAMAN on 5 November 2001. The Respondent-Registrant was granted Certificate of Registration No. 4-2002-006196 for goods under class 21, namely: “all kinds of strainers (brass or cast iron)” on 8 February 2004. Manuel Ang, Jr. was granted Certificate of Registration No. 4-2001-008234 on 28 August 2004 for goods under class 6, namely: Drains, namely: “Drains, namely: roof drain, floor drain, scupper drain, canopy drain, and all kinds of drain”. On 7 August 2009, the registered mark was transferred by Manuel

⁵ Exhibits “1” to “27” inclusive

Ang, Jr. to the Petitioner through a Deed of Assignment⁶ duly recorded with the IP Office.

Should the Respondent-Registrant's trademark registration JAMAN be cancelled?

Section 151 of the IP Code provides:

Section 151. Cancellation – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- (a) Within five (5) years from the date of registration of the mark under this Act.
- (b) At any time if the registered mark becomes the generic name for the goods or services or a portion thereof, for which it is registered or has been abandoned, or its registration obtained fraudulently, or contrary to the provisions of this Act, or if the registered mark is used by, or with the permission of the registrant so as to misrepresent the source of the goods or services or in connection with which the mark is used.

The competing marks, depicted below, are identical:

JAMAN

Petitioner's mark

JAMAN

Respondent-Registrant's mark

The Petitioner asserts that the Respondent-Registrant obtained the registration fraudulently and contrary to the provisions of the IP Code because it is not the true owner of the mark JAMAN. The Petitioner asserts further that its application has an earlier filing date, which makes Respondent-Registrant's registration contrary to Sec. 123.1(d) of the IP Code, which states that 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.

The records show that Petitioner's predecessor and founder Manuel Ang, Jr. filed an application for the mark JAMAN on 5 November 2001 ahead of Respondent-Registrant's filing date of 26 July 2002. On the contrary, Respondent-Registrant

⁶ Exhibit "ZZ"

contends to be the prior user of the mark JAMAN as early as 30 September 1998, as indicated in their respective Declarations of Actual Use.⁷ Evidence show that Respondent-Registrant Eurobrass Products, Inc. was incorporated in 1998. Respondent-Registrant asserts that it is through its sole effort, adhering to quality and excellence, that it is responsible for earning the goodwill and reputation as owner and supplier of JAMAN branded products. Respondent-Registrant's JAMAN mark was registered on 26 July 2002⁸, ahead of Manuel Ang, Jr.'s registration of the mark JAMAN.

A scrutiny of the facts reveal that the mark JAMAN was created from the name of Manuel Ang, Jr.: the letter "J" is from Junior, "A" from Ang, and "Man" from the first three letters of his name, "Manuel". The Petitioner proved that as early as October 1990, Manuel Ang, Jr. registered the name JAMAN METAL CRAFT with the Bureau of Internal Revenue⁹, pertinent to his sole proprietorship business. He issued sales invoices secured mayor's permits, licenses¹⁰ invariably dated between 1992 to 1993, indicating the name JAMAN METAL CRAFT. The mark JAMAN was adopted, originated, created and used by Manuel Ang, Jr. for his various products, such as brass, metal, drains, strainers, floor drains, funnels etc. Respondent-Registrant does not deny that it had a business relationship with Manuel Ang, Jr. when they formed the corporation, Eurobrass Products, Inc. (herein Respondent-Registrant) in 1998. Before that time, the Respondent-Registrant alleges that Ingrid Lim, Manuel Sy, Benjamin Go and Jimmy So, (shareholders in Eurobrass Products, Inc.) saw the demand for strainers and drains and needed a partner to manufacture the same under their direction. In fact, the SEC Articles of Incorporation of Respondent-Registrant¹¹ shows that Manuel Ang, Jr. joined the corporation as its largest shareholder. At this time, there is no evidence to show that the corporation filed any application for registration of the mark JAMAN. Neither is there any documentary evidence that Manuel Ang, Jr. allowed the corporation to use his mark. Records further show that Manuel Ang, Jr. left the corporation by executing a Deed of Assignment¹² on 7 February 2002. The Bureau observes that Manuel Ang, Jr. did not specify or relinquish any right to a trademark but merely his rights as a shareholder and officer of the company. In fact, Mr. Ang filed an application for the mark JAMAN on 5 November 2001 for goods under class 6, for his own account and under his own name. It was only after Mr. Ang left the corporation that the Respondent-Registrant filed its own application for the mark JAMAN on 26 July 2002, for goods under class 21. For all intents, Manuel Ang, Jr. and his assignee, Petitioner, Jaman Products, Inc., remain the owner, adopter and prior user of the mark JAMAN.

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

⁷ Exhibits "AAA" and "BBB"

⁸ Exhibit "23"

⁹ Exhibit "H"

¹⁰ Exhibits "H" to "MM"

¹¹ Exhibit "5"

¹² Exhibit "6"

imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.¹³

Succinctly, because the Respondent-Registrant uses its mark on goods that are similar or closely related to the Petitioner's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.¹⁴

The public interest, therefore, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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.¹⁵

In this regard, This Bureau emphasizes that it is not the application or the registration that confers ownership of a mark, but it is ownership of the mark that confers the right to registration. The Philippines implemented the World Trade Organization Agreement "TRIPS Agreement" when the IP Code took into force and effect on 1 January 1998.¹⁶

The owner of a registered trademark 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 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. The rights

¹³ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

¹⁴ *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

¹⁵ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

¹⁶ See Sec. 2: Trademarks, Art. 15 (Protectable Subject Matter)

described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

Significantly, Sec. 121.1 of the IP Code adopted the definition of the mark under the old law on Trademarks (Rep. Act. No. 166), to wit:

121.1 "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, R.A. No. 166a)

Sec. 122 of the IP Code also states:

Sec.122. How Marks Are acquired.- The rights in a mark shall be acquired through registration made validly in accordance with the provision of this law.

There is nothing in Sec.122 which says that registration confers ownership of the mark. What the provision speaks of is that the rights in the mark shall be acquired through registration, which must be made validly in accordance with the provision of the law.

Corollarily, Sec. 138 of the IP Code states:

A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

Aptly, even if a mark is already registered, the registration may still be cancelled pursuant to Sec. 151 of the IP Code. In the instant case, the Petitioner proved that it is the originator and owner of the mark "JAMAN". Although the goods of the Petitioner are under class 6, namely: "Drains, namely: roof drain, floor drain, scupper drain, canopy drain, and all kinds of drain", while the Respondent-Registrant's mark are under class 21, namely: All kinds of strainers (brass or cast iron), they fall under the same channels of trade. More importantly, an examination of the evidence show that the goods of Respondent-Registrant bearing the JAMAN marks as advertised in their flyers and brochures¹⁷ are the same "drains" product of the Petitioner or are related goods.

In *Mighty Corporation and La Campana Fabrica de Tabaco, Inc. v. E. & J. Gallo Winery and the Andresons Group, Inc.*¹⁸, the Supreme Court held:

"In resolving whether goods are related, several factors come into play:

- (a) the business (and its location) to which the goods belong
- (b) the class of product to which the goods belong
- (c) the product's quality, quantity, or size, including the nature of the package, wrapper or container
- (d) the nature and cost of the articles
- (e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality

¹⁷ Exhibits "10" to "14"; "17 to 24"

¹⁸ G.R. 154342, July 14, 2004

- (f) the purpose of the goods
- (g) whether the article is bought for immediate consumption, that is, day-to-day household items
- (h) the fields of manufacture
- (i) the conditions under which the article is usually purchased and
- (j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.”

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.¹⁹

The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

WHEREFORE, premises considered, the instant Petition for Cancellation of Trademark Registration No. 4-2002-06196 is hereby **GRANTED**. Let the filewrapper of the subject trademark registration be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 15 FEB 2017


ATTY. ADORACION U. ZARE, LL.M.
Adjudication Officer
Bureau of Legal Affairs

¹⁹ *American Wire & Cable Company v. Director of Patents*, G. R. No. L-26557, 18 February 1970.