

SUYEN CORPORATION,
Opposer,

-versus-

L'OREAL,
Respondent-Applicant.

X-----X

}	IPC No. 14-2014-00044
}	Opposition to:
}	
}	Appln. Serial No. 4-2013-008361
}	Date Filed: 16 July 2013
}	
}	TM: LOVE ME FOR ME

NOTICE OF DECISION

MIGALLOS & LUNA LAW OFFICES
Counsel for Opposer
7th Floor, The Phinma Plaza
39 Plaza Drive, Rockwell Center
Makati City 1210


QUISUMBING TORRES
Counsel for Respondent- Applicant
12th Floor, Net One Center
26th Street corner 3rd Avenue,
Crescent Park West, Bonifacio Global City
Taguig 1634

GREETINGS:

Please be informed that Decision No. 2017 - 67 dated 10 March 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPPL 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, 13 March 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

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x-----x		Decision No. 2017- <u>67</u>

DECISION

SUYEN CORPORATION¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-008361. The application, filed by L'OREAL² ("Respondent-Applicant"), covers the mark LOVE ME FOR ME for use on "make-up preparations" under Class 03 of the International Classification of Goods.³

The Opposer alleges that it will be damaged by the registration of the mark covered by the Respondent-Applicant's application because the mark is identical to and confusingly similar with its own duly registered trademark. Opposer also posits that the Respondent-Applicant's mark will mislead the public into believing that the products bearing the said mark are products marketed and sold by the Opposer and that the goods originated from the same source.

Opposer's evidence consists of the following:

1. Affidavit of Mr. Dale Gerald G. Dela Cruz;
2. List of Opposer's celebrity endorsers and scents inspired by them;
3. Photographs of promotional posters for the Celebrity Scents Collection;
4. Photograph of Kris Aquino Scents;
5. Certified copy of Certificate of Registration No. 4-2005-012469 for the mark LOVE ME;
6. Promotional materials of the launching of the LOVE ME body spray;
7. Printout of online blogs on the launching of Kris Aquino scents;
8. Sample press releases for Kris Aquino Scents;
9. Photocopies of Bench Care Catalogue;
10. Screen shots of Opposer's website featuring the LOVE ME body spray; and
11. Certified true copy of the Declaration of Actual Use (5th year) for LOVE ME trademark.

¹ A domestic corporation with address at Bench Tower, 30th Street corner Rizal Drive, Crescent Park West 5, Bonifacio Global City, Taguig.

² A foreign corporation with business address at 14 Rue Royale - 75008 Paris, France.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.

This Bureau issued on 11 April 2014 a Notice to Answer and served a copy thereof to the Respondent-Applicant on 16 April 2014. Despite receipt of the notice, Respondent-Applicant failed to file the answer. On 12 September 2014, this Bureau declared Respondent-Applicant in default. Accordingly, pursuant to Rule 2 Section 10 of the Rules and Regulations on Inter Partes Proceedings, as amended, the case is deemed submitted for decision on the basis of the opposition, the affidavits of witnesses, if any, and the documentary evidence submitted by the Opposer.

Should Respondent-Applicant's mark LOVE ME FOR ME be allowed registration?

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.⁴

Section 123.1 (d) of Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended, provides:

Section 123. Registrability. - 123.1. A mark cannot be registered if it:

x x x

(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;

It is clear from the above provision of the IP Code that whenever a mark subject of an application for registration resembles another mark which has been registered or has an earlier filing or priority date, said mark cannot be registered.

Records will show that at the time Respondent-Applicant filed his trademark application for LOVE ME FOR ME, Opposer already has an existing registration for the mark LOVE ME issued on 16 April 2007. As such, pursuant to Section 138 of the IP Code, being a holder of a certificate of registration, such "certificate of registration is a prima facie evidence of the registrant's ownership of the mark, and of the exclusive right to use the same in connection with the goods or services specified in the certificate and those that are related thereto."

But are the marks of the parties confusingly similar as to likely cause confusion, mistake or deception on the part of the buying public?

⁴ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 Nov. 1999.

The marks of the parties are herein reproduced for comparison:

Love Me

Opposer's Marks

LOVE ME FOR ME

Respondent-Applicant's Mark

A scrutiny of the Opposer's mark LOVE ME vis-a-vis that of Respondent-Applicant's LOVE ME FOR ME mark would show that they are confusingly similar marks. Both marks are mere word marks written in plain uppercase letters. The distinctive feature of Opposer's mark is the words "LOVE ME" which is the mark itself. On the other hand, Respondent-Applicant's mark consists of the words "LOVE ME FOR ME". Thus, what differentiates Respondent-Applicant's mark from that of Opposer's is the presence of the words "FOR ME". This difference, however, pales into insignificance because of the glaring similarities between the marks. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other.⁵ It has been stated time and again that, "the conclusion created by use of the same word as the primary element in a trademark is not counteracted by the addition of another term."⁶

Colorable imitation does not mean such similitude as amounts to identify, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, context, words, sound, meaning, special arrangement or general appearance of the trademark or trade name with that of the other mark or trade name in their over-all presentation or in their essential, substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article⁷.

The finding of confusing similarity based on the reproduction or copying of the dominant feature of a registered mark by the applicant has been dictated by numerous precedents laid down by no less than the highest court of the land. In *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*⁸, the Supreme Court has held that the determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark, patent and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof.

⁵ Societe Des Produits Nestle, Et. Al. vs. Court of Appeals. G.R. No. 112012. April 4, 2001

⁶ Continental Connector Corp. vs. Continental Specialties Corp. 207 USPQ 60.

⁷ Emerald Garment Manufacturing Corp. v. Court of Appeals. G.R. No. 100098, 29 Dec. 1995.

⁸ American Wire and Cable Co. v. Director of Patents et al., G.R. No. L-26557, 18 Feb. 1970.

Furthermore, the goods upon which the competing marks are used are closely related or competing. Respondent-Applicant's LOVE ME FOR ME mark is being applied for use on "make-up preparations" under Class 3 while Opposer's LOVE ME trademark is used on "Eau de Toilette" under Class 3 also. The goods of the parties are both considered cosmetics as they are products used to enhance or alter the appearance or fragrance of the body. Thus, the likelihood that the consumers would be mistaken, confused or deceived into believing that the goods come from the same source or origin, is more apparent.

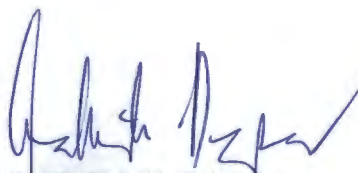
The protection of trademarks is the law's recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trademark is a merchandising shortcut, which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, due aim is the same – to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trademark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress.⁹

Thus, the registration of Respondent-Applicant's LOVE ME FOR ME mark is proscribed under Section 123.1 (d) of the IP Code.

WHEREFORE, premises considered, the instant Opposition is hereby *SUSTAINED*. Let the filewrapper of Trademark Application Serial No. 4-2013-008361 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 MAR 2017


MARLITA V. DAGOSA
Adjudication Officer
Bureau of Legal Affairs

⁹ *Societe Des Produits Nestle, Et. Al. vs. Court of Appeals. G.R. No. 112012. April 4, 2001*