



INTELLECTUAL PROPERTY
OFFICE OF THE
PHILIPPINES

LIFESTYLE YOGA NOOK INC.,
Opposer,

-versus-

ASIAN METABOLIC SCIENCE INSTITUTE INC.,
Respondent-Applicant.

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}

IPC No. 14-2016-00368

Opposition to:

Appln. Serial No. 4-2016-005403

Date Filed: 18 May 2016

TM: LIFELAB

X-----X

NOTICE OF DECISION

QUISUMBING TORRES

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GREETINGS:

Please be informed that Decision No. 2017 - 238 dated 20 June 2017 (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, 20 June 2017.

MARILYN F. RETUAL

IPRS IV

Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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LIFESTYLE YOGA NOOK INC.,	} IPC NO. 14-2016-00368
Opposer,	}
	} Opposition to:
	} Appln. Ser. No. 4-2016-005403
-versus-	} Date Filed: 18 May 2016
	}
	}
ASIAN METABOLIC SCIENCE	} Trademark: "LIFELAB"
INSTITUTE INC.,	}
Respondent-Applicant.	}
x-----x	} Decision No. 2017- 238

DECISION

LIFESTYLE YOGA NOOK INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2016-005403. The application, filed by ASIAN METABOLIC SCIENCE INSTITUTE INC. (Respondent-Applicant)², covers the mark "LIFELAB", for use on "Wellness Clinic" under Class 44 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

"4.1.1 The Opposer is the prior user and first filer of the application for registration of the LIFE trademark and trade name.

"4.1.2. The Published Mark is confusingly similar to the Opposer's LIFE trademark and trade name which is used by the Opposer for similar and/or related services under class 41 and in other classes.

"4.1.3. The registration and potential use of the Published mark amounts to Unfair Competition against the LIFE trademark and trade name of Opposer."

The Opposer further alleges, among other things, that:

"5.1. The Company was founded in March 2015 as Lifestyle Yoga Nook, Inc. by Noelle Anne L. Rodriguez for the purpose of establishing a mindful wellness lifestyle. The Company takes a holistic approach to wellness by integrating good food, music, art and a sense of community into the practice of yoga.

¹ A corporation duly organized and existing under Philippine laws with address at 2nd Floor, Eight Forbestown Road, Burgos Circle, Bonifacio Global City, Taguig City 1201

² A corporation with address at R 202 Eight Forbestown Forbestown Center BGC, Taguig City

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.

“5.2. The Company chose the LIFE mark and trade name as its logo to represent the holistic lifestyle of health and wellness it promotes. At its core, the Company aims to meaningfully innovate in the budding culture of yoga in the Philippines. It aims to bring the physical, mental and spiritual benefits of yoga off the mat and into the facets of everyday life.

“5.3. The Company first used the LIFE mark and trade name in the Philippines at least as early as July 2015 in connection with yoga instruction services. The Company was first licensed to operate in the Philippines using the LIFE trade name on March 2015.

“5.4. The Opposer has carried out high-profile advertising and promotion of its services and products bearing the LIFE mark and trade name in various media, including television commercials, outdoor advertisements, print publications, various promotional events and over the internet through various social media. All these efforts have resulted in making the LIFE mark and trade name well-known.

“5.5. The advertising efforts of the Opposer have been extensive. From July 2015 to August 2016, the Opposer has spent PHP 1,000,000.00 on advertising of its services and products marketed under the LIFE mark and trade name.

“5.6. The approximate amount of revenues derived by the Opposer from July 2015 to August 2016 is PHP8,000,000.00.

“5.7. As a result, the Opposer has sought to protect its property. The Opposer sought the trademark protection of the LIFE mark. In the Philippines, the Opposer filed an application for registration of the LIFE mark under Application No. 4-2016-005177 as early as 12 May 2016, before the filing date of Respondent-Applicant's mark, which was filed only on 18 May 2016. xxx

“5.8. The Respondent-Applicant's LIFELAB mark, without any authority from the Opposer appropriates and uses the dominant word 'LIFE' in Opposer's mark, and thus, is contrary to Section 123 of the IP Code, which provides:

Section 123. Registrability.-123.1. 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;



“5.9. The LIFE mark was conceptualized and created around 2015 by the Opposer. It is the trademark used to identify the yoga instruction services and other fitness training services of the Opposer. In the Philippines, the Opposer has used the LIFE mark at least as early as June 2015, well before the filing date of the Respondent-Applicant's trademark, which was filed only on 18 May 2016. The Opposer is therefore entitled to claim protection as the prior user of the said mark in the Philippines.

“5.10. The Paris Convention recognizes that trademark rights are available on the basis of actual use, as Article quinquies C-1) thereof provides that '[t]o determine whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time that mark has been in use.'

In turn, the TRIPS Agreement reaffirms the continuing applicability of the Paris Convention in Article 16 (1) thereof, which states that '[t]he rights 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.'xxx

“5.15. LIFE is also a trade name of the Opposer, which Respondent-Applicant may not copy. Section 165.2 of the IP Code provides that: xxx

“5.21. Yet, despite the clear ownership and first use by the Opposer of LIFE trademark and trade name, the Respondent-Applicant applied for the registration the Published Mark, which is confusingly similar with Opposer's LIFE mark and trade name, and for the similar and/or related services. xxx”

To support its opposition, the Opposer submitted as evidence the following:

1. Original Notarized verified Notice of Opposition;
2. Notarized Certificate and Special Power of Attorney;
3. Affidavit of Noelle Ann L. Rodriguez;
4. Print-outs of pages of website www.lifeyogacenter.com and www.facebook.com/LiFEyogaBGC/?fref=;
5. Photocopy of Certificate of the Securities and Exchange Commission;
6. Product brochures and description of services;
7. Print-out of pages from Opposer's website;
8. Advertising and promotional materials bearing Opposer's name;
9. Print-out of IPO database showing LIFE mark trademark application;
10. Photograph of Opposer's store;
11. Copies and print-out of publications and articles featuring LIFE; and

12. Photographs of Asian Metabolic Science Institute Inc.'s LIFELAB store /branch.⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 12 October 2016. The Respondent-Applicant, however, did not file an Answer.

Should the Respondent-Applicant be allowed to register the trademark LIFELAB?

Records show that at the time Respondent-Applicant applied for registration of the mark "LIFELAB" on 18 May 2016, Opposer filed its application 4-2016-005177⁵ for the mark "LIFE" on 12 May 2016. The services/goods covered by the Opposer's trademark application falls under Classes 41, namely: "yoga instruction: Providing fitness training services in the field of yoga", while the Respondent-Applicant's trademark application under the same Class 44 indicates use for "wellness clinic".

The competing marks, depicted below, are identical in respect of the word "LIFE". The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

:

LIFE
YOGA • FOOD • MUSIC

Opposer's mark

LIF=LAB

Respondent-Applicant's mark

Opposer and Respondent-Applicant's marks are similar in so far as the word "LIFE" in Respondent-Applicant's mark, "LIFELAB" resembles in looks and in sounds, the word "LIFE" in Opposer's mark. However, this Bureau finds that the presence of the word "LIFE" in both marks is insufficient to establish a finding of confusing similarity between the contending marks to sustain the opposition. The word "LIFE" is a word commonly used in the Philippines alone or appended to other words or devices/logos to coin unique marks. That is why, in this Office's Trademark Registry⁶ there are numerous trademark registrations and applications, bearing the word "LIFE" under several Classes, i.e. 7, 12, 29, 30, 32, 42 and 41, for various goods and services such as, but not limited to: chemical, biological products, motorcycles, automotive parts, educational, teaching instruction, cultural services, publication services, organizing and conducting classes, workshops, seminars, exhibitions, educational classes for medicine, dental, pharmaceutical and health related products, among others. This underscores the fact that "LIFE" is widely used as a trademark and taken alone is not very distinctive as to effectively identify the source of goods and services. Hence, what will determine

⁴ Exhibits "A" to "M"

⁵ Exhibit "J"


⁶ <http://www.wipo.int/branddb/ph/en/>

whether the computing trademarks are confusingly similar are the other words or symbols present in the marks. It is clear from the comparison of the marks that there are no other features that are similar. In Opposer's mark, the "LIFE" has a letter "I" in small case letter with the words "yoga", "food" and "music" below, while in Respondent-Applicant's mark LIFELAB, the letter "E" is written and depicted in three parallel, horizontal and differently colored lines. Furthermore, the Respondent-Applicant uses the colors teal green, gold, blue and red. The word "LAB" is appended to the word life, coining the term "LIFELAB". The differences create unique commercial impressions for each mark, that dispel any likelihood of confusion.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2016-005403 is hereby **DISMISSED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 JUN 2017


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