



LAKESIDE FOOD & BEVERAGES CORPORATION, }  
Petitioner, }

-versus-

WATSON ENTERPRISE LIMITED, }  
Respondent-Registrant. }

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IPC No. 14-2014-00196  
Cancellation of:  
Reg. No. 4-1997-126730  
Date Issued: 05 August 2004

TM: CRYSTAL SPRING  
with Chinese Characters

**NOTICE OF DECISION**

**LUMANIOG AND ASSOCIATES**

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**GREETINGS:**

Please be informed that Decision No. 2017 - 256 dated 28 June 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, 29 June 2017.

**MARILYN F. RETUAL**  
IPRS IV  
Bureau of Legal Affairs

**Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE**

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**LAKESIDE FOOD & BEVERAGES  
CORPORATION,**  
Petitioner,

-versus-

**WATSON ENTERPRISE LIMITED,**  
Respondent-Registrant.

} IPC No. **14-2014-00196**  
 } Cancellation of:  
 } Reg. No. 4-1997-126730  
 } Reg. Date: 5 August 2004  
 }  
 } Trademark: **CRYSTAL**  
 } **SPRING** with Chinese Characters  
 }  
 } Decision No. 2017- 256  
 x-----x

**DECISION**

LAKESIDE FOOD & BEVERAGES CORPORATION (Petitioner)<sup>1</sup> filed a Petition for Cancellation of Registration No. 4-1997-126730. The registration, in the name of WATSON ENTERPRISE LIMITED (Respondent-Registrant)<sup>2</sup>, covers the mark “CRYSTAL SPRING with Chinese Characters”, for use on “Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour preparations made from cereals, bread, pastry and confectionary, ices, honey, treacle, yeast, baking powder, salt, mustard, vinegar, sauces (condiments) spices ” under Class 30 of the International Classification of Goods<sup>3</sup>.

The Petitioner relies on the following grounds in support of the petition:

1. Prior to the registration of ‘Crystal Spring-Chinese’ on August 5, 2004, as early as 1997, the subject trademark ‘Crystal Spring’ had already been continuously used and adopted by Petitioner LAKESIDE. Petitioner’s history of prior use and continuous use for the trademark ‘Crystal Spring’ is hereby shown as follows:

“1.a. On November 10, 1995, the trademark ‘Crystal Spring’ had already been registered and adopted under the name of 4M Bottlers Inc. by virtue of Certificate of Registration No. 9168 issued by the then Bureau of Patents, Trademarks and Technology Transfer. Xxx

“1.b. On March 17, 1997, the adoption and use of the registered trademark ‘Crystal Spring’ was assigned by 4M Bottlers, Inc. to Water and Drink Enterprise (‘WADE’ for brevity), xxx

- “2. LAKESIDE, in its capacity as Manufacturer, has been in actual use of the mark ‘Crystal Spring’ for several years within the Philippine

<sup>1</sup> A corporation duly organized under the Philippine laws address at Purok 4 Brgy Makiling, Calamba, Laguna

<sup>2</sup> With address at Trident Chambers, Road Town Tortola

<sup>3</sup> 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.

Market. Starting 2005 to present, LAKESIDE is not only a manufacturer of the product bearing the mark 'Crystal Spring' but now also as a distributor of the same to some business outlets/establishments such as Kaibigan Restaurant in Malate, Manila, Havi Logistics Phil Inc. in Marikina City, Golden Arches Development Corp., Manuella Complex in Shaw Blvd. Mandaluyong, Brandic Sales, Inc, in Paranaque City, Redi Sales in Candelaria Quezon, Vintages Food Services in Lipa, Elise Food Services in Lyceum main- Batangas, as evidenced by Sales Invoices and Delivery Receipt issued by LAKESIDE. Xxx

"3. The actual and continuous use of the LAKESIDE for the product bearing the mark 'Crystal Spring' as Manufacturer, and now at the same time distributor, for several years within the Philippine market has clothed LAKESIDE with a prior and exclusive right to the use and registration of the mark 'Crystal Spring'. Thus, there is no doubt that it is through Petitioner's efforts that the mark 'Crystal Spring' has gained business goodwill and reputation in the Philippines.

"4. Notwithstanding the long years of LAKESIDE's prior actual use of the product bearing the mark 'Crystal Spring' in the Philippine market, however, WATSON fraudulently obtained Philippine Trademark Registration of 'Crystal Spring - Chinese' on August 5, 2004, a mark being identical to LAKESIDE's mark 'Crystal Spring'.

"5. Under Section 165.2 (a) and (b) of the Intellectual Property Code, trade names shall be protected against any subsequent use of a third party, when such use shall mislead the public, xxx

"7. WATSON's mark of 'Crystal-Spring Chinese' is not in actual use on commerce in WATSON's outlets within Philippine market. In fact, the non-existence of WATSON's mark 'Crystal-Spring Chinese' is hardly to be found in any of the section/areas of the Philippine market while LAKESIDE's 'Crystal Spring' is clearly present in the Philippine Market that started several years back. xxx"

To support its petition, the Petitioner submitted as evidence the following:

1. Copy of the Registration No. 9168 for the mark "CRYSTAL SPRING" in the Supplemental Register issued on 10 November 1995, for "Mineral Water" under Class 32;
2. Assignment of Trademark executed by 4M Bottlers, Inc. dated 17 March 1997;
3. Copies of Certificate of Product Registration issued by the Bureau of Food and Drugs (BFAD);
4. Sales Invoices and Delivery Receipts issued by Water and Drink Enterprise ('WADE' for brevity);
5. Sales Invoices and Delivery Receipts issued by Petitioner;

6. Print-out IPO database of Respondent-Registrant's "Crystal Spring" registration details; and
7. Sworn statements of Eduardo Sta. Ana; Roel S.Basila; Edgar Gilbuena; Roden Cincollagas.<sup>4</sup>

This Bureau served upon the Respondent-Registrant a "Notice to Answer" on 27 June 2014. The Respondent-Registrant, however, did not file an Answer.

Should the Respondent-Registrant's registration for the mark CRYSTAL SPRING with Chinese characters" be cancelled?

Records show that at the time the Respondent-Registrant was granted Registration No. 4-1997-0126730 for the mark "CRYSTAL SPRING with Chinese characters" on 5 August 2004 for goods under Class 30, the mark "CRYSTAL SPRING" under Registration No. 9168 was assigned through a Deed of Assignment to Water and Drink Enterprise, Inc.

But do the competing marks, depicted below resemble each other such that confusion, even deception, is likely to occur?

Petitioner's mark



Respondent-Registrant's mark



The marks are identical in respect of the words CYRSTAL SPRING. The Respondent-Registrant's mark includes Chinese characters above the words CRYSTAL SPRING, while the Petitioner's mark CRSTAL SPRING is encased in an oblong device with a design of mountains and a running spring. That the Petitioner's mark has additional visual features not present in Respondent-Registrant's mark is negligible because what is retained in the mind of the consumer when he or she purchases are the words CRYSTAL SPRING, instead of a picture. The words CRYSTAL SPRING are the dominant portion of the mark which was appropriated by the Respondent-Registrant. Hence, visually and aurally, the marks are confusingly similar.

Furthermore, the evidence shows that the Petitioner is the prior user, adopter and originator of the mark "CRYSTAL SPRING". The first and earlier registration and use of the mark "CRYSTAL SPRING" is traced from 4M Bottlers, Inc. under Reg. No. 9168<sup>5</sup>. Petitioner's distributor, Water and Drink Enterprise, Inc. acquired registration of

<sup>4</sup> Annexes "A" to "G" inclusive of submarkings

<sup>5</sup> Annex "A"

the mark by virtue of a deed of assignment<sup>6</sup> executed on 17 March 1997. The Bureau of Food and Drugs (now Food and Drugs Administration), issued to herein Petitioner as manufacturer, and Water & Drinks Enterprises, as distributor, certificates of product registration<sup>7</sup> for the product "CRYSTAL SPRING NATURAL DRINKING WATER" way back 2001 and 2009. These ante-date Respondent-Registrant's registration of the identical CRYSTAL SPRING mark. Moreover, the Petitioner proved that it has continuously used and traded in goods bearing the mark CRYSTAL SPRING, through various delivery receipts and sales invoices.<sup>8</sup> Any goodwill earned by the Assignor or previous trademark owner inures to the benefit of the assignee, Petitioner's distributor. Necessarily, the Petitioner as manufacturer will be damaged by the continued registration of Respondent-Registrant's CRYSTAL SPRING with Chinese character mark.

The Bureau also considers that even if the mark of the Respondent-Registrant is applied for goods under class 30, "Coffee, tea, cocoa, sugar, rice etc.", it is not farfetched that the public might be mistaken into thinking that they originate or are sourced from the Petitioner. Since the products of the parties are available in food outlets, supermarkets and the same channels of trade, they are considered related goods. In *Canon Kabushiki Kaisha v. Court of Appeals and NSR Rubber Corporation*, the Supreme Court held:

In cases of confusion of business or origin, the question that usually arises is whether the respective goods or services of the senior user and the junior user are so related as to likely cause confusion of business or origin, and thereby render the trademark or tradenames confusingly similar. Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores.

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 on the Trade - Related Aspects of Intellectual Property ("TRIPS Agreement") when the IP Code took into force and effect on 1 January 1998.<sup>9</sup> In the TRIPS Agreement, it is stated:

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 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.

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<sup>6</sup> Annex "B"

<sup>7</sup> Annex "C" inclusive

<sup>8</sup> Annex "D"

<sup>9</sup> See Sec. 2: Trademarks, Art. 15 (Protectable Subject Matter)

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.

Succinctly, because the Respondent-Registrant uses its mark on goods that are identical 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.<sup>10</sup>

The public interest, 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

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<sup>10</sup>*Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

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.<sup>11</sup>

**WHEREFORE**, premises considered, the instant Petition for Cancellation of Trademark Registration No. 4-1997-126730 is hereby **GRANTED**. 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, 28 JUN 2017



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

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<sup>11</sup>*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).