



STUDIO 23, INC.,
Opposer,

-versus-

HENRY A. ARCENAL,
Respondent- Applicant.

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IPC No. 14-2015-00120
Opposition to:
Appln. Serial No. 4-2014-503322
Date Filed: 30 July 2014
TM: "STINCO STUDIO 23
INTERLINKS CORPORATION"

NOTICE OF DECISION

VILLARAZA & ANGANGCO
Counsel for the Opposer
V & A LAW CENTER
11th Avenue corner 39th Street
Bonifacio Triangle, Bonifacio Global City
Taguig, Metro Manila

HENRY A. ARCENAL
Respondent-Applicant
20 Gordon Avenue, New Asinan
Olongapo City, Zambales

GREETINGS:

Please be informed that Decision No. 2017 - 274 dated June 30, 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, June 30, 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

STUDIO 23, INC.,

Opposer,

-versus-

HENRY A. ARCENAL,

Respondent-Applicant.

X ----- X

IPC No. 14-2015-00120

Opposition to Trademark

Application No. 4-2014-503322

Date Filed: 30 July 2014

Trademark: **"STINCO STUDIO 23
INTERLINKS CORPORATION"**

Decision No. 2017- 274

DECISION

Studio 23, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2014-503322. The contested application, filed by Henry A. Arcenal² ("Respondent-Applicant"), covers the mark "STINCO STUDIO 23 INTERLINKS CORPORATION" for use on "*perfume, bar soap and skin care products retail and wholesale*" under Class 35 of the International Classification of Goods³.

The Opposer alleges, among others, that it is engaged in the business of producing and distributing audio and related materials. It is a wholly-owned subsidiary of ABS-CBN Corporation ("ABS-CBN"), the Philippines' leading information and entertainment multimedia conglomerate. "STUDIO 23" is a television channel owned by the Opposer. Formerly, "STUDIO 23" is owned and operated by AMCARA Broadcasting Network, Inc., a related entity of ABS-CBN, until Opposer took over on 03 July 2000. The Opposer used to operate "STUDIO 23" until 31 December 2013. Officially launched on 12 October 1996, "STUDIO 23" as originally conceptualized as an alternative channel to ABS-CBN's mainstream Channel 2. It then expanded its viewership by offering more programs. It also established its presence in the online community. According to the Opposer, it registered the mark "STUDIO 23 AND DEVICE" for Class 35. Previously, AMCARA registered "STUDIO 23 PREMIUM NETWORK". It contends that the Respondent-Applicant's mark will dilute its own registered mark.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 16 May 2015. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Adjudication Officer issued on 21 October 2015

¹ A domestic corporation with business address at 3rd Floor, ABS-CBN Broadcast Center, Sgt. Esguerra Avenue corner Mother Ignacia Street, Quezon City.

² With address at 20 Gordon Avenue, New Asinan, Olongapo City, Zambales.

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.

Order No. 2015-1542 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the trademark "STINCO STUDIO 23 INTERLINKS CORPORATION" should be allowed registration.

Records reveal that at the time the Respondent-Applicant filed the contested application, the Opposer has registered its mark "STUDIO 23" as early as 15 September 2011.

Now, to determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the competing marks are shown below for comparison:



Opposer's Marks



Respondent-Applicant's Mark

When one looks at the Opposer's mark, what is impressed and retained in the eyes and mind is the word "STUDIO" and the number "23". This letter-number combination is the dominant feature of the mark that identifies services covered thereof. Upon scrutiny of Respondent-Applicant's mark, what are prevalent are the word "STINCO" and the number "23". Looking however at the words written below these features, it can be observed that "STUDIO 23" is also incorporated in the Respondent-Applicant's mark. Because of the Respondent-Applicant's use of "STUDIO 23", despite the other features of the said mark, the likelihood of confusion subsists. After all, confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. 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 purchased as to cause him to purchase the one supposing it to be the other.⁴

While it is true that the Opposer's mark cover entertainment while that of the Respondent-Applicant's pertains to skin products, it is still highly possible that

⁴ Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

purchasers will be confused, mistaken or deceived that the goods of the Respondent-Applicant is connected to, sponsored by or affiliated to the Opposer's. Corollarily, Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

"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; xxx"(Emphasis supplied.)

Succinctly, the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."⁵

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.⁶ Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The Respondent-Applicant was given ample opportunity to defend his trademark application but she did not bother to do so.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

⁵ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 8 August 2010.

⁶ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2014-503322 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 30 JUN 2017


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