



INTELLECTUAL PROPERTY
OFFICE OF THE
PHILIPPINES

TEA VENTURES CO., INC.,
Opposer,

-versus-

DESTILERIA LIMTUACO & CO., INC.,
Respondent-Applicant.

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IPC No. 14-2016-00175
Opposition to:

Appln. Serial No. 4-2013-000918
Date Filed: 29 January 2013

TM: TEAZERS

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NOTICE OF DECISION

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DESTILERIA LIMTUACO & CO., INC.
Respondent- Applicant
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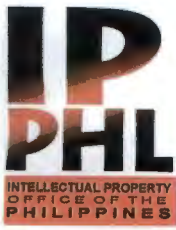
GREETINGS:

Please be informed that Decision No. 2017 - 234 dated 20 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, 20 June 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



TEA VENTURES CO., INC.

Opposer,

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DESTILERIA LIMTUACO & CO., INC.

Respondent-Applicant.

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IPC NO. 14-2016-00175

Opposition to:

Appln. Ser. No. 4-2013-000918

Date Filed: 29 January 2013

Trademark: TEAZERS

Decision No. 2017 - 234

DECISION

TEA VENTURES CO., INC.¹ ("Opposer") filed an Opposition to Trademark Application Serial No. 4-2013-000918. The application filed by DESTILERIA LIMTUACO & CO., INC.² ("Respondent-Applicant") covers the mark TEAZERS for use on "wines, spirits and liquors" under Class 33 of the International Classification of goods³.

The Opposer posits the following arguments to oppose Respondent-Applicant's application for registration of the TEAZERS mark:

"The registration of Respondent's "TEAZERS" mark is contrary to the provisions of Section 123.1 (d) of the IP Code.

" I. Opposer is the prior user and registered owner of the "teazers" mark under Classes 30 and 32.

"II. Respondent's "TEAZERS" mark is identical in spelling and pronunciation to Opposer's "teazers" trademark and the resemblance is likely to deceive or cause confusion.

"i. Under the Dominancy Test, Respondent's "TEAZERS" mark is confusingly similar to Opposer's registered mark, "teazers".

"ii. The goods identified by the Respondent's "TEAZERS" mark are very closely related to Opposer's beverage products thereby confusing consumers as to the source and affiliation of Respondent's goods.

¹ A domestic corporation with office address at 2286 Pasong Tamo Extension, Makati City.

² A domestic corporation with address at 1830 EDSA, Quezon City.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and service 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.

Republic of the Philippines

INTELLECTUAL PROPERTY OFFICE

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"III. The registration of the mark "**TEAZERS**" will prevent Opposer from using its "**teazers**" trademark for goods within the zone of natural business expansion.

Opposer's evidence are as follows:

1. Certified True Copy of Tea Ventures, Co. Inc.'s (TVCI) original Articles of Incorporation and By-Laws;
2. CTC of TVCI's latest Articles of Incorporation and By-laws;
3. CTC of TVCI's latest General Information Sheet;
4. Original Power of Attorney issued by TVCI in favor of BNU;
5. Original Secretary's Certificate authorizing Ms. Anna Maria H. Alcantara to sign the SPA;
6. Original print-out of the IPO E-Gazette publication of Trademark Application No. 4-2013-000918;
7. Original of Ms. Alcantara's Affidavit;
8. CTC of TVCI's original Articles of Incorporation and By-Laws;
9. TVCI's AOI adopted 13 May 1996;
10. TVCI's GIS dated 21 January 2016;
11. Copy of Cert of TM Reg. No. 4-2011-500407;
12. Sample letterhead template being used by TVCI;
13. Sample calling cards being used by TVCI;
14. Sample official receipt used by TVCI;
15. Sample sales invoice used by TVCI;
16. Sample delivery invoice used by TVCI;
17. Sample purchase order form used by TVCI;
18. Photo representations of some of Teazer Products' packaging;
19. Sample labels used on some Teaser products;
20. Sample flyers featuring Teazers products; and
21. Photo representations of Teazers pop-up stores.

On 14 June 2016, this Bureau issued a Notice to Answer and personally served a copy thereof to the Respondent-Applicant on 16 June 2016. Despite receipt of the Notice, Respondent-Applicant failed to file the answer. As a consequence, it was declared in default on 28 March 2017. Accordingly, this case is now submitted for decision on the basis of the opposition, affidavits of witnesses, and other documentary evidence pursuant to Rule 2, Section 10 of the Rules and Regulations on Inter Partes Proceedings, as amended.

Should the Respondent-Applicant be allowed to register its **TEAZERS** ?

Opposer anchors its opposition on Section 123.1 (d) of Republic Act No. 8293, also known as the "Intellectual Property Code of the Philippines" ("IP Code") which provides, to

wit:

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;

Explicit 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 its application for registration of the herein subject mark, Opposer already has an existing registration for the its TEAZERS mark which was issued on 27 January 2012. 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."

Also, a comparison of the marks would also show that they are similar. For a better appreciation of the marks, they are reproduced here:

Opposer's Mark

Respondent-Applicant's Mark

It is very clear that both marks contain the word "TEAZERS" which is the mark itself of the parties. Although the respective marks are presented differently, however, the prominent or distinguishing element of the competing marks is the word "teazers" itself. Thus, there is no doubt that Opposer's and Respondent-Applicant's mark are similar .

Moreover, trademarks are designed not only for the consumption of the eyes, but also to appeal to the other senses, particularly, the faculty of hearing. Thus, when one talks

about the Opposer's trademark or conveys information thereon, what reverberates is the sound made in pronouncing it. Similarity of sound is sufficient ground to rule that two marks are confusingly similar when applied to merchandise of same descriptive properties. When the competing marks are pronounced the sound effects are confusingly similar. In fact, the Supreme Court has in many cases took into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity. In *Marvex Commercial Co., Inc. v Petra Hawpia & Co., et al.*⁴, the Court held:

The following random list of confusingly similar sounds in the matter of trademarks, culled from *Nims, Unfair Competition and Trade Marks*, 1947, Vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jass-Sea"; "Silver Flash" and "Supper Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo." Leon Amdur, in his book "Trade-Mark Law and Practice," pp. 419-421, cites [sic], as coming within the purview of the idem sonans rule, "Yusea" and "U-C-A," "Steinway Pianos" and "Steinberg Pianos," and "Seven-Up" and "Lemon-Up." In *Co Tiong vs. Director of Patents*, this Court unequivocally said that "Celdura" and "Condura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin," as the sound of the two names is almost the same.

In this case, Respondent-Applicant's mark is not only aurally similar but identical. Hence, the likelihood of confusion on the part of the consumers or the public is inevitable.

Also, a boundless choice of words or phrases is available to one who wishes a trademark sufficient unto itself to distinguish his product from those of others. When, however, there is no reasonable explanation for the defendant's choice of such a mark though the field for his selection was so broad, the inference is inevitable that it was chosen deliberately to deceive.⁵

But what about the goods of the parties?

A rudimentary precept in trademark protection is that the right to a trademark is a limited one, in the sense that others may use the same mark on unrelated goods.⁶ Opposer's mark TEAZERS is used on "iced tea beverages or tea-based beverages including concentrates, ready-to-drink & powders" under Class 32 and on "fruit juices including concentrates, ready-to-drink & powders" under Class 30. On the other hand, Respondent-Applicant's mark is being applied for use on "wines, spirits and liquors" under Class 33. Although the goods of the parties belongs to different classes, they are both "beverage products". As correctly pointed out by Opposer, the goods of the parties are "complementary" as the products of Opposer's are usually mixed to alcoholic beverages, such that there is likelihood that the public will be

⁴ G.R. No. L-19297. December 22, 1966 cited in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993. August 18, 2004.

⁵ *Converse Rubber Corporation vs. Universal Rubber Products, Inc.*, G.R. No. L-27906. January 8, 1987.

⁶ *Philippine Refining Co., Inc. vs. Ng Sam and The Director of Patents*, G.R. No. L-26676, July 30, 1982.

confused, mistaken or deceived that Respondent-Applicant's goods are manufactured or sourced from Opposer or that Respondent-Applicant's goods is an extension of the beverage products of the Opposer because of the use of confusingly similar marks.


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. The intellectual property system is not a haven for people who would take advantage of the intellectual creation of others, whether a local resident or a foreigner.⁷

Accordingly, the registration of Respondent-Applicant's mark is proscribed by law.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2013-000918, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 JUN 2017.


MARLITA V. DAGSA
Adjudication Officer
Bureau of Legal Affairs

⁷ See Decision in Appeal No. 14-2010-0013 dated 11 June 2012.