



INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

DOMINGO AW,
Opposer,

-versus-

MARY ANNE ONG SY,
Respondent-Applicant.

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IPC No. 14-2014-00499
Opposition to:
Appln. Ser. No. 4-2013-00014374
Date Filed: 02 December 2013

TM: KVISION

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 391 dated 29 November 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, 11 December 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



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DOMINGO AW,

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- versus -

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IPC NO. 14 – 2014 - 00499

Opposition to:
Trademark Application Serial No.
4201300014374

TM: "KVISION"

DECISION NO. 2017 - 391

DECISION

MR. DOMINGO AW (Opposer)¹ filed an Opposition to Trademark Application Serial No. 4-2013-00014374. The trademark application filed by MS. MARY ANNE ONG SY (Respondent-Applicant)², covers the mark "KVISION" for use on "*DVD player, karaoke sound system, speaker*" under Class 9 of the International Classification of Goods³.

The pertinent allegation in the Opposition are quoted as follows:

6. Opposer is the prior applicant of the mark "KARAVISION" in the Philippines having filed its trademark application on January 26, 2000 or more than thirteen (13) years before the Applicant filed its application for the mark "KVISION" on December 02, 2013: x x

7. Opposer has a prior valid and existing trademark registration in the Philippines for the mark "KARAVISION" which was granted on July 26, 2005 or more than eight (8) years before Applicant filed its application for the mark "KVISION" on December 02, 2013 x x x

8. Opposer is the creator and originator of the arbitrary and coined trademark "KARAVISION". In 1999, oppose introduced the KARAVISION karaoke players to create the market space for affordable karaoke units. x x x

¹ A natural person address at #25 Duhat St. Malabon, Metro Manila.

² A natural person with address at Unit 620, 6th Floor 168 Shopping Mall, Soler Street, Binondo Manila.

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.*

9. Opposer's "KARAVISION" mark is well-known in the Philippines. The "KARAVISION" karaoke player is the market leader in the mass market for 15 years now.

9.1. "KARAVISION" karaoke players and electronic products are widely distributed and sold nationwide. "KARAVISION" products have strong commercial presence in Metro Manila. x x x

10. Opposer has invested in the promotion and marketing of the "KARAVISION" mark in the Philippines. Thus, gaining for the "KARAVISION" trademark a strong hold in the consumer electronic market. x x x

11. The goods of Respondent-Applicant's "KVISION" trademark are identical with the goods covered by Opposer's "KARAVISION" mark. x x x

12. The goods of Respondent-Applicant has appropriated the closely similar or identical "KVISION" trademark for the obvious purpose of capitalizing upon the goodwill established by the well-known "KARAVISION" trademark and to make the public believe that its identical goods originate from, or are licensed or sponsored by Opposer to the damage of Opposer's interests.

12.1 The packaging use by "KVISION" for its karaoke machine is similar, if not identical, with the packaging of "KARAVISION" for its karaoke machines. x x x

13. The marks "KARAVISION" and "KVISION" are substantially identical or closely similar, a side by side comparison of the marks will reveal that the marks not only look-alike but also sound-alike.

13.1. Applicant's mark "KVISION" has appropriated the dominant element "VISION" of Opposer's "KARAVISION" mark.

13.2. Both marks start with the same letter "K" coupled with the word "VISION". Moreover, by merely adding the letters "ARA" to Applicant's "KVISION" mark gives the impression that the Respondent-Applicant's mark is part and associated with the Opposer's mark "KARAVISION." Clearly, the marks are confusingly similar.

To support its Opposition, the Opposer submitted the following exhibits:

Exhibit "A" – Print-out copy of from IPOPHL trademark registration database of the trademark "KARAVISION";

Exhibit "B" – Copy of the Certificate of Registration of the Opposer's KARAVISION Trademark with Registration No. 4-2000-000569;

Exhibit "C" – Copy of the History of "KARAVISION";

Exhibit "D" – Copy of Company Profile of Maxvision Technology Enterprises, Inc.;

Exhibit "E" to "E-9" – Copy of Delivery Receipt of Fuyo Electric Industrial Corporation;

Exhibit "F" to "F-3" – Marketing materials for the trademark KARAVISION;

Exhibit "G" to "G-1" – Print out of the youtube website depicting Karavision Philippines Karaoke;

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Exhibit "H" – Picture of the packaging of KVISION product;

Exhibit "H-1" to "H-2" – Pictures of the KVISION product;

Exhibit "I" to I-2" – Picture of packaging of KARAVISION product; and

Exhibit "J" – Picture of Comparison of the packaging of KVISION and KARAVISION product.

This Bureau issued a Notice to Answer dated 20 January 2015. On 29 May 2015, The Bureau received a Manifestation from the Respondent-Applicant's counsel stating that the Respondent-Applicant failed to received the Opposer's Notice of Opposition. On 15 June 2015, the Opposer's counsel manifested that it has sent a copy to the Respondent-Applicant's counsel. On 29 June 2017, the Opposer filed a Motion for Extension of Time to File Answer which was granted in Order No. 2015-986. However, the Respondent-Applicant failed to file its Answer. Thus, on 2 December 2015, the Respondent-Applicant was declared in default. A Motion for Reconsideration was filed by Respondent-Applicant which was denied. Consequently, the instant case is submitted for decision.

The issue in the present case is whether to allow the registration of herein Respondent-Applicant "KVISION" trademark.

The Opposition is anchored on Section 123.1 pars. (d), (e), (f) and (m) of Republic Act No. 8293, also known as, the Intellectual Property Code of the Philippines ("IP Code"), to wit ,

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;

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect

to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;

x x x

(m) Is contrary to public order or morality

Upon examination of the competing trademarks, and evaluation of the records and the evidence submitted by the Opposer, this Bureau finds the opposition meritorious.

The trademarks subject of the instant case are reproduced below for examination.

KARAVISION

Kvision

Opposer's Trademark

Respondent's - Applicant's
Trademark

Both the competing wordmarks consist of seven (7) similar letters, namely, the letters "K", "V", "I", "S", "I", "O" and "N." From a visual and aural standpoints, the two word marks closely resemble each other. The words KA-RA-VI-SION and K-VI-SION have almost identical sounds. The difference in the middle portion of the contending wordmarks, particularly, the presence of the letters "A", "R", "A" in the Opposer' marks is negligible and not enough to differentiate one over the other. In fact, one may even think that the Respondent-Applicant mark is merely an abbreviation of the Opposer's trademark.

Moreover, confusion or even deception is highly probable because the products covered by the competing trademarks are similar and/or closely related goods. The products subject of the applied trademark of the respondent-applicant are DVD player, karaoke sound system, and speaker under Class 9 of the Nice Classification of Goods and Services, which are similar or closely related to the VCD or Video Compact Disc of the Opposer. It is likely therefore that the goods of the Respondent-Applicant may be confused with the Opposer's or the public may commit a mistake, or be deceived, in assuming that the Respondent-Applicant's goods originated from the Opposer or there is a connection between the parties and/or the goods.


Time and again, it has been held in our jurisdiction that 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.⁴ Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.⁵

Verily, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the earlier mark.⁶

WHEREFORE, premises considered, the instant opposition to Trademark Application Serial No. 4201300014374 is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4201300014374 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 29 NOV 2017


Atty. Leonardo Oliver Limbo
Adjudication Officer
Bureau of Legal Affairs

⁴ American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970

⁵ Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992

⁶ American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.