



INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

SUYEN CORPORATION,
Opposer,

-versus-

GLOBAL IDEALOGY CORPORATION,
Respondent-Applicant.

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IPC No. 14-2014-00111
Opposition to:
Appl. Ser. No. 4-2013-12385
Date Filed: 16 October 2013

TM: B/

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 402 dated 05 December 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOP HL 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. RETUTAL
IPRS IV

Bureau of Legal Affairs



SUYEN CORPORATION,

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GLOBAL IDEALOGY CORPORATION,

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} **IPC NO. 14-2014-00111**

} Opposition to:

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} Appln. Ser. No. 4-2013-12385

} Date Filed: 16 October 2013

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} Trademark: **B/**

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x-----x} Decision No. 2017- 462

DECISION

SUYEN CORPORATION, (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2013-12385. The application, filed by GLOBAL IDEALOGY CORPORATION, (Respondent-Applicant)², covers the mark “B/”, for use on “computer software” under Class 9 of the International Classification of Goods³.

The Opposer anchors its opposition on the ground that it will be damaged by the registration of the mark. It avers that the mark is identical to and confusingly similar with Opposer’s registered trademarks and will mislead the public into believing that the products bearing the same mark are the same products marketed and sold by the Opposer. The Opposer contends that the mark of the Respondent-Applicant may and will be used as an instrument of unfair competition.

The Opposer alleges the following facts:

“2.1 Suyen was incorporated in 1985 as a manufacturing company dealing in wearing apparel, garments and accessories. At present, Suyen manufactures, distributes, markets and sells apparel and lifestyle products carrying different brands and trademarks, including its flagship BENCH. Suyen continues to make its mark a leading lifestyle retailer in the Philippines and in the region.

“2.2 When BENCH started in 1987, it initially offered only men’s t-shirts. Since then, Suyen has expanded its business to a complete range of apparel and lifestyle products. The company now provides baby care, fix hair care, organics and personal care products, as well as intimate apparel, fragrances, houseware, even snacks, and other lifestyle products for men and women under different brands and trademarks, with the

¹ A domestic corporation duly organized and existing under Philippine laws with principal address at Bench Tower, 30th St. corner Rizal drve, Cresecent Park West 5, Bonifacio Global City, Taguig

² A domestic corporation with address at 4F Centrum II Building, 150 Valero St., Makati 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.

distinction of being present in virtually every retail space in the Philippines and with a worldwide network of stores and outlets, reaching as far as the United States, the Middle East, Singapore and China.

“2.3 Suyen grew and continues to grow at an unparalleled rate by being the pioneer in the use of celebrity endorsers, television commercials and giant billboards to propel fashion brands that offer premium and quality products at affordable prices. Other popular and successful brands owned by Suyen include ‘HUMAN’, ‘KASHIECA’, ‘FIX BENCH SALON’, ‘DIMENSIONE’, ‘PCX’, ‘FIRST AID’, and ‘BE CONNECTED’, among others.

“2.4. Suyen, together with its sister companies, has successfully penetrated even the service industry. Suyen now provides services in connection with the internet café industry, furniture industry, beauty salon and skin care industry. At present, Suyen has over nine hundred (900) stores in the Philippines alone. Suyen-owned and operated stores outside the Philippines have almost reached the one hundred (100) mark.
xxx

The BENCH and other derivative trademarks (hereinafter collectively the ‘BENCH Trademarks’) have also been registered by Suyen, and or are covered by applications for registration, in several countries worldwide.

“2.11 Among Suyen’s BENCH derivative marks are ‘b/PURE’, ‘b/SIMPLE’, ‘b/BARE’, ‘Overhauled b/low INSIDE A SQUARE DEVICE’, ‘b/body’ and ‘b/tweeners’ marks (hereinafter collectively ‘b/ marks’). The b/ stands for BENCH or, as also used and registered, ‘bench/’. xxx

“2.13 Suyen has adopted the marks ‘b/PURE’, ‘b/SIMPLE’, ‘b/BARE’ to represent a collection of body spray products under the BENCH flagship trademark. The products were developed as female counterparts of the Bench Body Spray Series, namely: B2O, Eight and Atlantis.

“2.14 Suyen has likewise adopted the marks ‘Overhauled b/low INSIDE A SQUARE DEVICE’, ‘b/body’ and ‘b/tweeners’ to represent different lines of products, such as but not limited to, denim jeans, personal care, shoes, bag and clothing products, all of which are under the BENCH principal trademark.xxx

“2.18 The said applications were granted by the IPOPHL and the ‘b/marks’ were registered in the name of Suyen, as follows:

Mark	Certificate of Registration	Date of Registration
b/SIMPLE	4-1998-003501	December 8, 2005
b/PURE	4-1998-003498	November 20, 2005

b/BARE	4-1998-003500	December 8, 2005
Overhauled b/low	4-2006-001703	July 30, 2007
b/body	4-2009-011311	June 4, 2010
b/tweeners	4-2010-013763	May 12, 2011

“2.19 Suyen has extensively used the ‘b/marks’ as an integral part of its business and as part of its advertising and promotional strategies. It has exerted substantial efforts and has spent substantial amounts in using and promoting the products and the trademarks ‘b/PURE’, ‘b/SIMPLE’, ‘b/BARE’, ‘Overhauled b/low INSIDE A SQUARE DEVICE’ and ‘b/tweeners’.

- a) Suyen has manufactured, launched, distributed and sold products bearing the ‘b/marks’ which have gained popularity in the market among ordinary purchasers.
- b) Suyen has undertaken and continues to undertake extensive promotional campaigns using the ‘b/marks’.
- c) Suyen markets its b/PURE, b/SIMPLE, b/BARE body sprays and b/tweeners clothing line, in its website (www.benchtm.com) where said products are made available for online purchase.
- d) As part of its advertising campaign, Suyen has also spent substantial amounts of money to advertise its products bearing the ‘b/marks’ in several local newspapers and popular lifestyle magazines nationwide.
- e) Suyen has engaged the services of costly celebrity endorsers like Richard Gomez, Rica Peralejo-Bonifacio and Richard Gutierrez, to name a few, to promote Suyen’s products bearing the ‘b/marks’.

“2.19 The level of fame and consumer recognition which the ‘BENCH’ trademark and the derivative ‘b/marks’ currently enjoy cannot be seriously disputed.

“2.20 As a result of Suyen’s extensive advertising and use of the ‘BENCH’ trademark and the ‘b/marks’, the said marks have acquired extensive goodwill and have come to be immediately identified with Suyen or BENCH.

“2.21 As stated above, several of the ‘b/marks’ were used by Suyen as early as 1997.

“2.22 As stated above, Suyen has also successfully penetrated the internet café industry through its Be Connected Internet Café. The first Be Connected internet café was opened in 18 September 2001 at Greenbelt 1, Makati City. The Be Connected business and brand is

owned and operated by Mother Unit Corporation, one of the sister companies of Suyen. At present, there are three (3) such internet cafes in Metro Manila.

“2.23 Suyen also owns the trademark ‘>BE CONNECTED’ covering Class 30 (coffee beans, coffee drink) and Class 42 (Internet café and bar).

“2.24 Suyen learned through its monitoring activities that on 16 October 2013, Trademark Application No. 4-2013-12385 in the name of the respondent-applicant Global Ideology Corporation was filed with the IPOPHL for the registration of the mark ‘B/’, which is confusingly similar with Suyen’s ‘b/marks’. Considering that BENCH is also known both with a capital ‘B’ and with a small letter ‘b’ the use of the capital ‘B’ with a slash is and will be easily associated with BENCH and Suyen in any market.

“2.25 Respondent-applicant seeks to register the ‘B/’ mark of respondent-applicant is allowed and registered. It will mislead and confuse the public as to the source of goods. Ordinary purchasers will be confused and led into the belief that the ‘B/’ computer software sold by respondent-applicant are part of Suyen’s business and products, or associated with Suyen and/or its Be Connected Internet Café.

“2.26 Suyen will suffer substantial and irrevocable damages if said application is granted. The conflicting mark will dilute the distinctiveness and goodwill which the ‘b/ marks’ of Suyen has established through long use and promotion and will prevent and prejudice any further expansion of Suyen’s internet café business.

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

1. Affidavit of Dale Gerard G. Dela Cruz dated 9 May 2014;
2. List of trademark applications and registrations for BENCH;
3. Certified true copy of Certificate of Registration No. 4-2012-009892 for the mark “BENCH” issued on 29 November 2012 for goods under classes 3, 5, 18, 25 and 36;
4. Certified true copy of Certificate of Registration No. 4-2012-000751 for the mark “BENCH AND DEVICE” issued on 26 April 2012 for goods under classes 3, 5, 18, 25 and 35;
5. Certified true copy of Certificate of Registration No. 4-2012-000750 for the mark “BENCH/ AND DEVICE” issued on 26 April 2012 for goods under classes 3, 5, 18, 25 and 35”;
6. Certified true copy of Certificate of Registration No. 4-1998-003501 for the mark “b/SIMPLE’ issued on 8 December 2005 for goods under class 3;
7. Certified true copy of Certificate of Registration No. 4-1998-003498 for the mark “b/PURE” issued on 20 November 2005 for goods under class 3;
8. Certified true copy of Certificate of Registration No. 4-1998-003500 for the mark “b/BARE” issued on 8 December 2005 for goods under class 3;

9. Certified true copy of Certificate of Registration No. 4-2006-001703 for the mark "OVERHAULED b/low" issued on 30 July 2007 for goods under class 25;
10. Certified true copy of Certificate of Registration No. 4-2009-011311 for the mark "b/body" issued on 4 June 2010 for goods under classes 3, 18, 25 and 35;
11. Certified true copy of Certificate of Registration No. 4-2010-013763 for the mark "b/tweeners" issued on 12 May 2011 for goods under classes 3, 6, 9, 18, 20,25, 26 and 35;
12. Photographs of products with "b/marks";
13. Sample promotional materials;
14. Screenshots of BENCH website with products bearing "b/marks";
15. Sample newspaper advertisements showing products with "b/marks"
16. Sample newspaper advertisements with pictures of celebrity endorsers;
17. Declarations of Actual Use;
18. Photographs of ">Be Connected" internet cafes in Greenbelt 4 and Trinoma;
19. Certified true copy of Certificate of Registration No. 4-2001-004440 for the mark ">BE CONNECTED" issued on 7 February 2004 for goods under classes 30 and 42; and
20. Print-out of website of www.benggaapp.com⁴

The Respondent-Applicant filed its Answer on 18 August 2014, alleging among other things, the following:

"1. Respondent is a software solutions and IT enabled outsourcing services provider. Its main business is to help institutional customers, namely companies, in transforming the way they operate or manage their businesses. With its technological knowledge, it developed a social media software application named Bengga, which used the mark 'B/.'

"3.2.1 The Bengga software is a social media application along the similar lines of facebook, Twitter or Instagram.

"3.2.2 The name Bengga is a Filipinized slang of the Spanish verb 'to come,' which in the Spanish vernacular could mean either 'to go,' 'to hurry' or 'to shoot' (a basketball)."

"3.2.3 The software allows users to communicate with each other by posting photographs with the mark 'B/' acting like a hashtag. In respondent's case, it likewise wants 'Bengga' to be synonymous to 'taking action.' Thus, instead of a hashtag, the software will use the mark 'B/' as what it terms as an action tag.

"3.2.4 Respondent derived the mark 'B/' from Bengga's first letter and coupled it with a forward slash. The forward slash is a programming symbol as in Microsoft code which uses C:/. The forward slash not only

⁴ Exhibits "A" to "Z"

signifies the computer element, it also enhances the active image the software application portrays.

"3.3 Hence, respondent's Bengga is not any other ordinary software product since it is not even sold. It can be downloaded for free at a moile app store. To begin with, there is no ordinary purchaser who will be confused. Opposer tries to force a round peg into a square hole. It is evident that there could simply be no confusing similarity between its so called 'b/ marks' and respondent's 'B/mark'.

"3.4 Visually, the two designs are completely different. Respondent's mark is in upper case B accompanied by a slash while opposer's is a lower case b followed by a slash sign. Significantly, respondent's "B/" design is its actual mark while opposer has never registered its "b/" design as a trademark. Opposer's registered trademarks are composite marks containing the "b/" design and other descriptive and stylized elements that are associated with the product.xxx

"3.6 In addition, if the visual representation is accompanied by an aural component, the two marks all the more become distinct. As opposer has elucidated, the "b/" design is so closely associated

The Respondent-Applicant submitted as evidence, the following:

1. Copy of screen shot of app tutorial explaining *Bengga* and B/; and
2. Copies of screen shots of *Bengga* app.⁵

The Preliminary Conference was terminated on 27 April 2015 where the Hearing Officer directed both parties to file their respective position papers. The Opposer and Respondent-Applicant filed their position papers on 12 May 2015.

Should the Respondent-Applicant be allowed to register the trademark B/?

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 Thus, Sec. 123.1 (d) of R. A. No. 8293, also known as The Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

⁵ Exhibits "1" to "11"

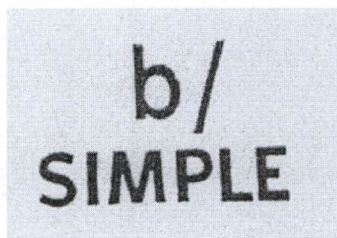
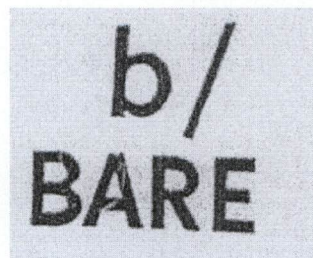
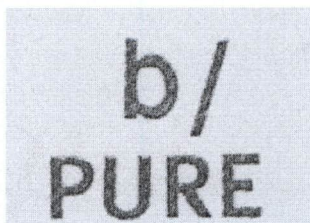
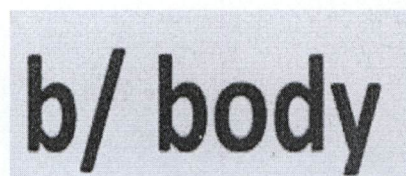
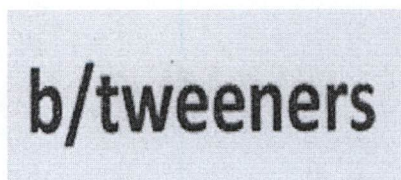
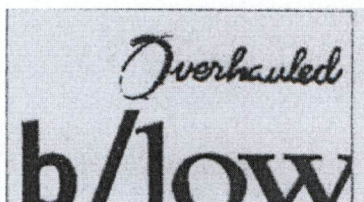
⁶ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

Records show that at the time Respondent-Applicant applied for registration of the mark "B/" the Opposer already registered the marks b/SIMPLE, under Certificate of Registration No. 4-1998-003501⁷ issued on 8 December 2005; b/PURE under Certificate of Registration No. 4-1998-003498⁸ issued on 20 November 2005; b/BARE under Certificate of Registration No. 4-1998-003500⁹ issued on 8 December 2005 and Certificate of Registration No. 4-2001-004440 for the mark ">BE CONNECTED" issued on 7 February 2004. The goods/services covered by the Opposer's trademark registrations are under Class 03 and 42, while the Respondent-Applicant's trademark application is for computer services under Class 09.

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

The competing marks are reproduced below:

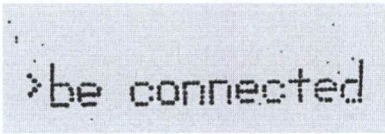
Opposer's marks

A rectangular box containing the text "b/SIMPLE" in a bold, sans-serif font. The "b/" is on the top line and "SIMPLE" is on the bottom line.A rectangular box containing the text "b/BARE" in a bold, sans-serif font. The "b/" is on the top line and "BARE" is on the bottom line.A rectangular box containing the text "b/PURE" in a bold, sans-serif font. The "b/" is on the top line and "PURE" is on the bottom line.A rectangular box containing the text "b/body" in a bold, sans-serif font. The "b/" is on the top line and "body" is on the bottom line.A rectangular box containing the text "b/tweeners" in a bold, sans-serif font. The "b/" is on the top line and "tweeners" is on the bottom line.A rectangular box containing the text "Overhauled" in a cursive script font on the top line, and "b/low" in a bold, sans-serif font on the bottom line.

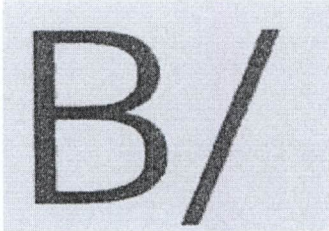
⁷Exhibit "F"

⁸Exhibit "G"

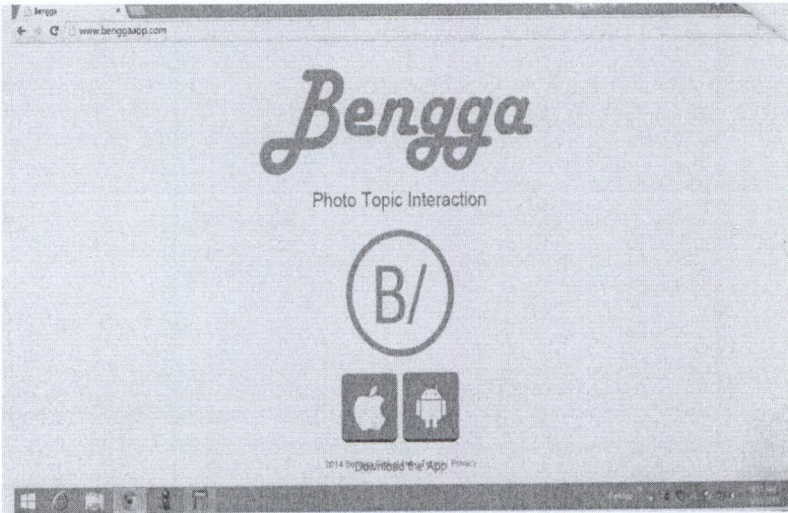
⁹Exhibit "H"



Respondent-Applicant's mark



The marks are similar with respect to their use of the letter/symbol "B/". Such similarity and the fact that Opposer uses its ">BE CONNECTED" mark for internet services will strongly result in the likelihood of confusion among consumers of software and internet services. Even if Opposer's mark "<BE CONNECTED" covers class 30, namely "coffee beans, coffee drink" and Class 42, namely "internet café and bar" while the Respondent-Applicant's mark "B/" is applied on "computer software" under class 9, the products/services flow through the same channels of trade and distribution. The Respondent-Applicant's "app" or application can be downloadable while inside the Opposer's internet cafe. The screenshot of Respondent-Applicant's mark is shown below:



Succinctly, because the Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer'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:

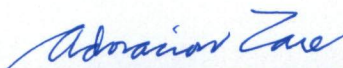
Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of 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.¹⁰

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 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.¹¹

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-12385 is hereby **SUSTAINED**. 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, 05 DEC 2017


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

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

¹¹*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).