



INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

SUYEN CORPORATION,
Opposer,

-versus-

HOLCIM LTD.,
Respondent-Applicant.

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IPC No. 14-2016-00301

Opposition to:

Appln. Serial No. 4-2016-004042

Date Filed: 18 April 2016

TM: FIX IT

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2018 - 08 dated 24 January 2018(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, 25 January 2018.

MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



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SUYEN COPORATION,
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IPC No. 14-2016-00301
Opposition to Trademark
Application No. 4-2016-004042
Date Filed: 18 April 2016

Trademark: "**FIX IT**"

Decision No. 2018- 08

DECISION

Suyen Corporation¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2016-004042. The contested application, filed by Holcim Ltd.² ("Respondent-Applicant"), covers the mark "FIX IT" for use on "*cement, mortar, concrete, ready-made concrete*" under Class 19 of the International Classification of Goods³.

According to the Opposer, it was incorporated in 1985 as manufacturing company dealing in clothing apparel, garments and accessories. At present, it is in the business of manufacturing, marketing, advertising, distributing and selling apparel and lifestyle products carrying different brands and trademarks, including its flagship brand "BENCH". Among others, it has penetrated the service industry including beauty salon services under the name "FIX BENCH SALON", which is operated by B Cut, Inc., its sister company. Even before it opened its first salon in 2001, it has already manufactured, advertised, distributed and sold hair products under its "FIX" trademark.

The Opposer maintains that the mark "FIX" was issued registration on 01 July 2004. It likewise claims to have registered the marks "FIX", "FIX BENCH SALON", "I-FIX & Device of letter I" and "Bench/FIX PROFESSIONAL". It thus contends that the Respondent-Applicant's mark "BODYFIX" is identical or confusingly similar to its own "FIX" trademarks. In support of their Opposition, the Opposer submitted the affidavit of its Assistant Vice-President – Brand Marketing for local brands, Mr. Dale Gerald G. Dela Cruz, with annexes.⁴

¹ A corporation organized and existing under the laws of the Republic of the Philippines with office address at Bench Tower, 30th Street corner Rizal Drive, Crescent Park West 5, Bonifacio Global City, Taguig 1634.

² With known address at Zurcherstrasse 156 Ch-8645, Jona, Switzerland.

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.

⁴ Marked as Exhibits "A" to "P", inclusive.

A Notice to Answer was issued and served upon the Respondent-Applicant on 19 September 2016. The latter, however, did not file an Answer. Thus, the Adjudication Officer issued Order No. 2017-790 on 04 April 2017 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the Respondent-Applicant's trademark application for "FIX IT" should be allowed.

Records reveal that at the time the Respondent-Applicant filed its application for registration of the contested mark on 18 April 2016, the Opposer has already registered the mark "FIX" under Certificate of Registration No. 4-2000-00133 issued on 01 July 2004 for "*hair lotion, hair gel, hair crème, hair polish, hair shampoo, hair conditioner*" under Class 03.

But are the marks, as shown below, confusingly similar?

Opposer's Marks

FIX **FIX***
bench savon



PROFESSIONAL

Respondent-Applicant's Mark

FIX IT

The competing marks similarly appropriate the word "FIX". Be that as it may, this Adjudication Officer finds that the Respondent-Applicant's mark may be allowed registration. 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.)

Confusion, much more deception, is highly unlikely in this case because of the disparity of the goods involved. The Respondent-Applicant's mark "FIX IT" covers "cement, mortar, concrete, ready-made concrete". Not only are these obviously unrelated to salon products and/or services, which the Opposer uses its registered mark, the target consumers and channels of trade are different. A person intending to buy cement products is unlikely to go to a salon or grocery store that sells or offers the Opposer's "FIX" products, and vice-versa.


Moreover, it is noteworthy that the goods and/or services covered by the marks are not basic or inexpensive items. These are not your ordinary household items like catsup, soy sauce or soap which are of minimal cost. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely.⁵

Furthermore, 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 The Respondent-Applicant's mark sufficiently met this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2016-004042 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 24 JAN 2018


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

⁵ Diaz vs. People of the Philippines, G.R. No. 180667, 18 February 2013.

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