

c) The trademark applied for by CFC Corporation consisting of the words BLEND 45 GOLD, is likely to be confused by the purchasing public as trademark belonging to or associated with the goods and/or business if the Opposer.”

The Respondent-Applicant filed its Answer to the Notice of Opposition by denying all the material allegations of the Opposition and further alleged that the mark “GOLD” is generic.

It was also averred that this trademark application in question consists of a composite mark namely – BLEND 45 GOLD.

After the issues have been joined, pre-trial conferences were scheduled with both parties submitting their pre-trial briefs. No amicable settlement was reached, neither was there any stipulation of facts; in due course the pre-trial was terminated. Both parties introduced evidence in support of their respective positions.

The main issue in this case is whether the mark BLEND 45 GOLD is confusingly similar to the mark “GOLD” or “GOLD BLEND” or “GOLD CUP”;

In support of this Opposition, the Opposer submitted and formally offered in evidence the following trademark registrations, to wit:

- “1. No. 31515 for the trademark “GOLD BLEND“ (Exhibit “B” to “B-2”);
2. No. 33311 for the trademark “GOLD” (Exhibits “C” to “C-Z-a”); and
3. No. 33315 for the trademark “GOLD CUP” (Exhibits “D” to “D-Z-a”).

On the other hand, Respondent-Applicant formally offered in evidence its certificate of Registration No. 30032 for the trademark BLEND 45 (Exhibit “1”) and the labels of its products bearing the trademark BLEND 45 GOLD (Exhibit “4” and “5”). It was argued that these labels are not confusingly similar with the labels of the “GOLD”, “GOLD BLEND” and “GOLD CUP”.

Based on the foregoing factual setting this Office finds the Opposition meritorious.

The function of a trademark is to point out distinctly the ownership or origin of the products to which the trademark is applied in order to assure the public that they are procuring the right product they intended to buy. By its continued use, it acquires goodwill and reputation which are valuable assets built upon the mark by the expenditure of time, money and effort. After sometime, as a result of such factors, the purchasers buy the product because of the mark associated with it.

The law protects this valuable asset to the same extent as other property rights established by law. It grants the owner the right to use his mark to the exclusion of others. This finds statutory expression in Section 4(e) which provides:

“SECTION 4. Registration of trade-marks, trade-name and service-marks on the principal register. - - There is hereby established a register of trade-marks, trade-names and service-marks which shall be known as the principal register. The owner of a trade-mark, trade-name or service mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same of the principal register, unless it:

xxx

(e) Consists of a mark or trade-name which, when applied to or used in connection with the goods, business or services of the applicant is merely descriptive or deceptively misdescriptive of them, or when applied to or used in

connection with the goods, business or services of the applicant deceptively misdescriptive of them, or is primarily merely a surname;”

The facts are undisputed. The Opposer has been issued trademark Certificate of Registration No. 33311 for the trademark “GOLD” (Exhibits “C” to “C-Z-a”) used for coffee products. On the other hand the trademark being opposed is the composite mark BLEND 45 GOLD, wherein the term GOLD is part and parcel thereto.

It is the view of this Office that the use of the word GOLD by the Respondent would likely cause confusion with the trademark GOLD of the Opposer when used on the same line of goods namely coffee products.

In *Phil. Nut Industry Inc. vs. Standard Brand* 65 SCRA 575, the Honorable Supreme Court said that: Whether or not a trademark causes confusion and is likely to deceive the public is a question of fact which is to be resolved by applying the “test of dominancy” meaning if the competing marks contain the main or essential or dominant features of another by reason of which confusion and deception are likely to result, then there is infringement. Along this line of thought, the Supreme Court, in *American Wire Cable vs. Director of Patents*, 31 SCRA 544 laid down the doctrine that the dominant and essential feature of an article is the trademark itself.

With the Respondent’s appropriation of the Opposer’s trademark GOLD to coin the trademark BLEND 45 GOLD, it would not be denied that the Respondent’s mark appropriated the dominant feature of opposer’s mark which is the trademark GOLD itself. This may cause confusion by reason of which buyers who intended to buy coffee under this trademark “GOLD” may eventually buy coffee under the trademark BLEND 45 “GOLD” because of the presence of the word GOLD in the latter’s mark.

In *CFC Corporation vs. Court of Appeals, et.al.*, G.R. No. 108590, 5 July 1993 (par. 1; p.4), a case involving arising out of a different cause of action, the Supreme Court held that:

“As between the parties, it was the Respondent (referring to the herein opposer) who has previously used the word “GOLD” and established whatever goodwill “GOLD” has with respect to the coffee-drinking Sector of the general public. It is the Petitioner (referring to the herein Respondent-Applicant) as new comer, who has everything to gain and nothing to lose by the confusion between the two (2) marks, if any confusion there be.”

WHEREFORE, premises considered, this Opposition is hereby SUSTAINED and Applicant Serial No. 56352 is hereby REJECTED.

Let the filewrapper of this case be forwarded to the Trademark Examining Division for appropriate disposition.

SO ORDERED.

IGNACIO S. SAPALO
Director