

HOMELAND HOUSEWARES LLC,
Opposer,
- versus -

IPC 14-2007-00082

HOME SHOPPING NETWORK, INC.
Respondent-Applicant.

Opposition to:
TM Application No. 4-2004-006411
(Filing Date: 20 July 2004)

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TM: "MAGIC BULLET & DESIGN"

Decision No. 2007 – 79

DECISION

This is an opposition to the registration of the mark "MAGIC BULLET & DESIGN" bearing Application No. 4-2004-006411 filed on July 20, 2004 covering the goods "household appliances namely blender, juice extractor, chopper, mixer, grater and grinder" falling under Class 7 of the International Classification of goods which application was published in the Intellectual Property Philippines (IPP) Official Gazette on November 30, 2006.

The Opposer in the instant opposition is "HOMELAND HOUSEWARES, LLC." A limited liability company DULY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF California, United States of America, with business address at 15250 Ventura Boulevard, 3rd Floor, Sherman Oaks, California, United States of America.

Respondent-Applicant on the other hand is "HOME SHOPPING NETWORK, INC." with business address at KLG Building; Delbors Avenue corner V. De Leon Street, Barrio Ibayo, Paranaque City, Philippines.

The grounds for the opposition are as follows:

"1. Opposer is the originator, true owner and first user of the trademark "MAGIC BULLET", which is an internationally-known mark used on goods belonging to International Class 7 of the NICE Classification for electronic appliances particularly kitchen food processors, namely blenders, mixers, their parts and other fittings thereof, having adopted and continuously used the same since July 2004 up to the present. Opposer has already developed an exceedingly valuable goodwill worldwide on the mark "MAGIC BULLET", which is used on its blenders or mixers. Therefore, it has every right to exclude others, such as the Respondent-Applicant from registering or using identical or similar marks in the Philippines, more so if such unauthorized use is made of the same goods.

"2. The filing of the application for "MAGIC BULLET" UNDER Class 7 by the Respondent-Applicant will cause confusion on the part of consumers or purchasers as it tends to create an impression that its products originate from the Opposer. Consumers familiar with the Opposer's products will likely to buy Respondent-Applicant's on the assumption that such products are made by Opposer, thereby resulting in loss of sales to the later. Confusion as to the Respondent-Applicant's affiliation, connection or association with the Opposer as likewise probable, considering that its mark is identical to the Opposer's mark.

"3. The registration of trademark "MAGIC BULLET" under Class 7 in the name of the Respondent-Applicant will cause irreparable damage and injury to the Petitioner within the contemplation of Section 134 of Republic Act No.8293, otherwise known as the new Intellectual Property Code of the Philippines.

Opposer relied on the following facts to support its opposition:

"1. Opposer is the originator, true owner and user of the mark "MAGIC BULLET" for electronic appliances, kitchen food processors, blenders and mixers. From its establishment in 2003, Opposer has invested a considerable amount in developing and marketing its "MAGIC BULLET" blender and mixers sold worldwide through direct marketing infomercials and retail marketing. "MAGIC BULLET" product of the Opposer has been advertised extensively on the internet, easily accessible to Filipino consumers, and is listed for sale on various websites including Opposer's website: www.buythebullet.com. Attached herewith and made integral part of this opposition is a print-out of Opposer's official website www.buythebullet.com consisting of forty-one (41) pages collectively marked as Exhibit "A" print-outs of the various websites offering the sale of "MAGIC BULLET" product, maintained by Thane International, Inc., an authorized international, Inc., an authorize international distributor of the Opposer in countries such as the United States of America, Canada, United Kingdom, France, Europe, Italy, Spain, Scandinavia (Denmark, Sweden, Finland, Norway) and Middle East, consisting of ninety-two(92) pages, are attached herewith and made Integral of this Opposition, collectively marked as exhibit "B" and Opposer's posting at www.Epinions.com., www.laslpash.com., www.everythingkitchens.com., www.ifomercialcentral.com., www.amazon.com and www.asseenontv.com ., consisting of eighteen(18) pages, are likewise attached herewith and made integral part of the opposition, collectively marked as Exhibit "C".

There is really no issue as to priority of use. Opposer has been using the mark in commerce long before Respondent-Applicant filed its application for registration with the Intellectual Property Philippines (IPP) on July 20, 2004. By virtue of Opposer's tremendous efforts, considerable advertising and promotional activities, and of course the excellence of its "MAGIC BULLETS" products, Opposer has already established and gained a valuable reputation on the aforesaid mark.

"2. With the extensive commercial use and sale of its "MAGIC BULLET" products in International market, Opposer obtained various registrations and filed trademark applications for the mark "MAGIC BULLET" and "MAGIC BULLET LOGO" in different jurisdiction around the world. Copies of Opposer's U.S. trademark registrations for the mark "MAGIC BULLET" and "MAGIC BULLET Logo", i.e. U.S. Trademark Registration Nos. 2,947,494, and 2,947,492 both issued May 10, 2005; Trademark Application No. 78/879,234 filed on May 8, 2006 for the mark "Magic Bullet Logo"; Trademark Application No. 78/937,054 filed on July 25, 2006 for the mark "Magic Bullet To Go (Stylized)" are hereto attached and made integral parts of its opposition as Exhibit "D", "E", "F" and "G" respectively.

Opposer likewise obtained Community Trademark Registration Nos. 003584885, 004100483 and Community Trademark Application No. 004956462 for the mark "MAGIC BULLET" and "MAGIC BULLET Logo". Attached herewith and made integral parts of this opposition are copies of Community Trademark Registration No. 003584885, 004100483 and Community Trademark Application No. 004956462 marked as Exhibits "H", "I" and "J" respectively.

Hereunder is a listing of the numerous applications and registrations of the Opposer around the world evidencing its large trademark portfolio for the marks "MAGIC BULLET" and "MAGIC BULLET Logo":

Country	Trademark	Classes	Application No.	Date Filed	Registration No.	Date Issued
Argentina	MAGIC BULLET	7	2666341	26-Apr-05		
Australia	MAGIC BULLET	7	10119561	08-Sep-04	1019561	16-May-05
Austria	MAGIC BULLET	7	AM2399/2006	30-Mar-06	232866	07-Jul-06

Benelux	MAGIC BULLET	7	1107833	28-Mar-06	799105	07-Jun-06
Brazil	MAGIC BULLET	7	826865674	01-Dec-04		
Canada	MAGIC BULLET	7	1240091	14-Dec-04	TMA 675220	18-Oct-06
China	MAGIC BULLET	7	4001661			
China	MAGIC BULLET	7	4192698	28-Jul-04		
Ecuador	MAGIC BULLET	7	170644	10-May-06		
European Union	MAGIC BULLET	7-	4100483	08-Nov-04	4100483	16-Dec-05
Finland	MAGIC BULLET	7	T200402888	10-Nov-04	237486	15-Nov-06
France	MAGIC BULLET	7	43323133	10-Nov-04	43323133 304 64	10-Nov-04
Germany	MAGIC BULLET	7	30464443.9/7	12-Nov-04	443	9-Mar-05
India	MAGIC BULLET	7	1442760	05-Apr-06		
Indonesia	MAGIC BULLET	7	D00-2006.010590	05-Apr-06		
Italy	MAGIC BULLET	7	RM2006C0021288	04-Apr-06		
Japan	MAGIC BULLET	7	81967/2004	06-Sep-04	4901640	14-Oct-05
South Korea	MAGIC BULLET	7	2006-31794	16-Jun-06		
Malaysia	MAGIC BULLET	7	2004/13938	16-Sep-04		
Mexico	MAGIC BULLET	7	780650	03-may-06		
New Zealand	MAGIC BULLET	7	718025	06-Sep -04	718025	10-Mar-05
Poland	MAGIC BULLET	7	Z-308384	29-Mar-06		
Romania	MAGIC BULLET	7	M2006-09903	31-Aug-06		
Russian Federation	MAGIC BULLET	7	2006707856	30-Mar-06		
Saudi Arabia	MAGIC BULLET	7	94758	07-Feb-05	810/03	19-Oct-05
South Africa	MAGIC BULLET	7	2006/06746	29-Mar-06		
Spain	MAGIC BULLET	7	2707195	20-Apr-06		
Switzerland	MAGIC BULLET	7	52954-2006	03-Apr-06	547485	26-Jun-06
United King Dom	MAGIC BULLET	7	2377774	10-Nov-04	2377774	10-Nov-04
Australia	MAGIC BULLET LOGO	7	1097329	06-Feb-06		
Canada	MAGIC	7	1296497	03-Apr-06		

	BULLET LOGO					
European Union	MAGIC BULLET LOGO	7	4956462	14-Mar-06		
India	MAGIC BULLET LOGO	7	1435576	23-Mar-06		
Japan	MAGIC BULLET LOGO	7	23295/2006	15-Mar-06		
South Korea	MAGIC BULLET LOGO	7	2006-13622	16-Mar-06		
Taiwan	MAGIC BULLET LOGO	7	95013046	17-Mar-06		
Canada	MAGIC BULLET PLATINUM PRO	7	1307868	04-Jul-06		
European Union	MAGIC BULLET PLATINUM PRO	7	4956462	26-Jun-06		
Australia	MAGIC BULLET TO GO	7	1142147	19-Oct-06		
Canada	MAGIC BULLET TO GO	7	1320619	18-Oct-06		
European Union	MAGIC BULLET TO GO	7	5139647	15-Jun-06		
India	MAGIC BULLET TO GO	7	1499627	30-Oct-06		
Japan	MAGIC BULLET TO GO	7	96870/2006	10-Oct-06		
South Korea	MAGIC BULLET TO GO	7	2006-56371	08-Nov-06		
Mexico	MAGIC BULLET TO GO	7	817034	01-Nov-06		
Australia	MAGIC BULLET TO GO LOGO	7	1142148	19-Oct-06		
European Union	MAGIC BULLET TO GO LOGO	7	5393095	17-Oct-06		
India	MAGIC BULLET	7	1497888	19-Oct-06		

	TO GO LOGO					
Japan	MAGIC BULLET TO GO LOGO	7	96871/2006	18-Oct-06		
South Korea	MAGIC BULLET TO GO LOGO	7	2006-60076	28-Nov-06		
Mexico	MAGIC BULLET TO GO LOGO	7	816178	30-Oct3-06		

"3. Opposer's mark is also well-known in the Philippines considering that there has been bonafide commercial sale of its products in the domestic market since July 2004. Opposer sold one thousand (1,000) units of "MAGIC BULLET" blenders to Positive Response Vision, Inc., with business address at 1191 Vito Cruz Extension, Makati City, Philippines in July 2004. Enclosed herewith is a copy of the Bill of Lading dated September 4, 2004 evidencing the shipment of "MAGIC BULLET" blenders, food mixers and grinders to Positive Response Vision, Inc marked as exhibit "K".

"4. A close perusal of the two marks would readily show that Respondent-Applicant's mark is deceptively identical with the Opposer's mark. Thus, Respondent-Applicant's mark would indubitably create confusion or deceive purchasers as to the actual source or origin of its goods may be mistaken by the unwary public as related to the products manufactured and sold by Opposer. Purchasers are likely to consider the goods of the Respondent-Applicant under the mark "MAGIC BULLET", as emanating from the Opposer and on the basis thereof purchase Respondent-Applicant's goods. The aforesaid situation will clearly result in loss of sales to the Opposer.

"5. The use of the mark by the Respondent-Applicant in identical goods will surely result in irreparable damage to Opposer's reputation and goodwill. The extent of irreparable damage will indisputably be greater if the goods sold by the Respondent-Applicant will be of inferior quality since purchaser are likely to attribute the source of the goods to the Opposer.

"6. Opposer has spent considerable effort and expenses worldwide in promoting its trademark "MAGIC BULLET" on blenders, mixers and other food processor, such that the purchasing public has come to know; rely upon, recognize and depend on the superior quality of the Opposer's products bearing such mark. Any defect or fault that can be found on Respondent-Applicant's products under the same mark would necessarily reflect upon and seriously injure the valuable goodwill and reputation which the Opposer has long established for its products sold under the mark "MAGIC BULLET".

"7. Opposer's right over the mark "MAGIC BULLET", specifically its right to enjoy free and exclusive use thereof in connection with the sale of its goods will be greatly prejudiced if the Respondent-Applicant will be permitted to register its mark.

"8. Taken in the light of the foregoing precepts, it is clear that Opposer stands to be prejudiced and damaged should Respondent-Applicant's Application No. 4-2004-006411 for the trademark MAGIC BULLET & DESIGN be allowed registration. Petitioner has sufficiently proven that it is the true originator and prior user of the trademark "MAGIC BULLET" and is therefore entitled to the protection against unauthorized users like herein Respondent-Applicant.

The Bureau of Legal Affairs issued a Notice to Answer which was sent to the Respondent-Applicant's counsel and which was duly received on April 27, 2007.

Despite receipt of the Notice to Answer, however, Respondent-Applicant did not file the required Answer, together with the affidavits of its witness and other documents in support of its application hence, the same is considered WAIVED.

Section 11 of the Summary Rules (Office Order No. 79, Series of 2005) provides:

Section 11. Effect of failure to file an Answer – In case the Respondent-Applicant fails to file an answer, or if the answer is filed out of time, the case shall be decided on the basis of the Petition or Opposition, the affidavit of the witnesses and documentary evidence submitted by the Petitioner or Opposer.

The Opposer submitted following as its evidence:

Exhibit	Description
Exhibit "A"	Computer print-outs of the Opposer's official website consisting of forty-one (41) pages
Exhibit "B"	Computer's print-outs of various websites offering "NAGIC BULLET", maintained by Thane International, Inc., authorized distributor, consisting of ninety-two (92) pages
Exhibit "C"	Computer print-outs of Opposer's posting to various websites, consisting of eighteen (18) pages.
Exhibit "D"	USPTO Registration NO. 2,947,494 for the mark "MAGIC BULLET" issued on May 10, 2005
Exhibit "E"	USPTO Registration No. 2,947,492 for the mark "MAGIC BULLET Logo" issued on May 10, 2005
Exhibit "F"	USPTO Trademark Application No. 78/897,234 filed on May 8, 2006 for the mark "MAGIC BULLET TO GO"
Exhibit "G"	USPTO Trademark Application No. 78/937,054 filed on July 25, 2006 for the mark "MAGIC BULLET TO GO (Stylized)".
Exhibit "H"	European Community Trademark Registration No.003584885 for the mark "MAGIC BULLET"
Exhibit "I"	European Community Trademark Registration No. 004100483 for the mark "MAGIC BULLET & Logo"
Exhibit "J"	European Community Trademark Application No.004956462 for the mark "MAGIC BULLET"
Exhibit "K"	Bill of Landing dated September 4, 2004 to Positive Response Vision, Inc.
Exhibit "L"	Authentication issued by Consulate General of the Philippines, City of Los Angeles, State of California U.S.A.

On the other hand, Respondent-Applicant failed to file the require Answer and so with the affidavits of its witnesses and the documents in support of its application subject of the instant opposition.

The only issue to be resolved in this particular case is:

WHETHER OR NOT THE RESPONDENT-APPLICANT IS ENTITLED FOR THE REGISTRATION OF THE MARK "MAGIC BULLET & DESIGN".

The applicable provision of the law is, Section 123 (d) of Republic Act No. 8293, which provides:

Sec.123. *Registrability* – 123.1. A mark cannot be registered if it:

- (d) Is identical with a registered mark belonging to a different proprietor or mark with an earlier filing or priority date, in respect of:
 - a. The same goods or services, or
 - b. Closely related goods or services, or
 - c. If it nearly resembles such a mark as to be likely to deceive or cause confusion;

For purpose of comparison and scrutiny, the trademark of the parties is hereby reproduced below:



Opposer's mark
Registration No. 2,947,494
Registered May 10, 2005
Trademark Office (USPTO)



Respondent-Applicant's mark

There is no doubt that the trademark "MAGIC BULLET" which Respondent-Applicant seeks to register in its name is an exact or copy of the registered trademark "MAGIC BULLET of HOMELAND HOUSEWARES LLC, a limited liability company of the State of California, United State of America (Paragraph 2 of the fact relied by the Opposer) and likewise as shown in the print-out of Opposer's official website www.buythebullet.com consisting of forty-one (41) pages collectively marked as (Exhibit "A").

Most importantly, both trademarks are used in the sale of the same kinds of goods or products and falling under the same Class 7 of the International Classification of goods.

Being identical to the trademark "MAGIC BULLET" of the Opposer, the consuming public, particularly, the unwary consumers will be deceived, confused and mistaken into believing that the goods of the Respondent-Applicant come from or are authorized by the Opposer which will redound to its damage and prejudice.

In connection with the use of confusingly similar or identical mark, both foreign authority and Supreme Court on several occasions ruled thus:

"Those who desire to distinguish their goods from the goods of another have a broad field from which to select a trademark for their wares and there is no such poverty on the English language or paucity of sign, symbols, numerals, etc., as to justify one who really wishes to distinguish his products from those of all others entering the twilight zone of a field already appropriated by another. "(Weco Products Co., vs. Milton Ray Co., F, 2d 985, 32 C.C.P.A. Patents, 1214)

Viewed in the light of the foregoing, this Bureau finds and so holds that Respondent-Applicant's mark "MAGIC BULLET and DESIGN" is confusingly similar to Opposer's mark "MAGIC BULLET".

WHEREFORE Opposer's Notice of Opposition is hereby SUSTAINED. Consequently Application No. 4-2004-006411 filed on July 20 2004 for the mark "MAGIC BULLET and DESIGN" filed by HOME SHOPPING NETWORK, INC. is as it is hereby, REJECTED.

Let the filewrappers of the trademark "MAGIC BULLET AND DESIGN" subject matter of this case together with a copy of this DECISION be forwarded to the Bureau of Trademark (BOT) for appropriate action.

SO ORDERED.

Makati City, 29 June 2007

ESTRELLITA BELTRAN-ABELARDO
Director Bureau of Legal Affairs
Intellectual Property Office