

SYNGENTA PARTICIPATIONS AG,
Opposer,

- versus -

CONSUMER CARE PRODUCTS, INC.,
Respondent-Applicant.

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IPC No. 2009-00101
Case Filed on : 30 March 2009
Opposition to:
App. Serial No. 4-2007-000591
Date Filed : 19 January 2007
TM : "GUARD"

Decision No. 2010-42

DECISION

SYNGENTA PARTICIPATIONS AG ("Opposer"), a corporation organized and existing under the laws of Switzerland with office address at Schwarzwaldallee 215, 4058 Basel, Switzerland, filed an opposition to Trademark Application Serial No. 42007-000591.¹ The application, filed by CONSUMER CARE PRODUCTS, INC. ("Respondent-Applicant"), a domestic corporation with address at No. 5 Mercury Avenue, Bagumbayan, Quezon City, covers the mark "GUARD" for use on insecticide under Class 05 of the International Classification of Goods.²

The Opposer alleges the following:

"3. The trademark GUARD being applied for by respondent-applicant is confusingly similar to opposer's trademark OPTIGARD, as to be likely, when applied to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

"4. The registration of the trademark GUARD in the name of respondent-applicant will violate Section 123.1, subparagraph (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as follows:

x x x

"5. The registration of the trademark GUARD in the name of respondent-applicant is contrary to Section 123.1, subparagraph (e) of the Intellectual Property Code of the Philippines, as follows:

x x x

"6. The registration of the trademark GUARD in the name of respondent-applicant is also contrary to Section 123.1, subparagraph (f) of the Intellectual Property Code of the Philippines, as follows:

x x x

"7. The registration of the trademark GUARD in the name of respondent-applicant will also violate Section 6bis of the Paris Convention for the Protection of Industrial Property, to which the Philippines is a party having acceded thereto as early as September 27, 1965, as follows:

x x x

"8. The registration and use by respondent-applicant of the trademark GUARD will diminish the distinctiveness and dilute the goodwill of Opposer's trademark OPTIGARD.

¹ The application was published in the Intellectual Property E-Gazette on 28 November 2008.

² The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a multi-lateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.

“9. The registration of the trademark GUARD in the name of respondent-applicant is contrary to other provisions of the Intellectual Property Code of the Philippines.

“FACTS AND CIRCUMSTANCES
IN SUPPORT OF THE OPPOSITION

“I

Opposer, being the owner/registrant of the mark OPTIGARD in the Philippines, has superior and exclusive rights over the said mark and other marks similar thereto, to the exclusion of any third party.

“1. In the Philippines, opposer is the owner/registrant of the trademark OPTIGARD under International Class 5, the particulars of which are as follows:

Trademark	:	OPTIGARD
Reg. No.	:	4-2005-011674
Date Issued	:	November 20, 2006
Appln. No.	:	4-2005-011674
Date Filed	:	November 25, 2005
Goods	:	Insecticides
Class	:	5

x x x

“3. In the Philippines, Opposer has caused the registration of its product in several agencies of the government like the Fertilizer and Pesticide Authority (FPA) of the Department of Agriculture and the Bureau of Food and Drugs (BFAD) of the Department of Health. x x x

“4. Opposer has likewise caused the extensive promotion, advertising, sale and marketing of its products bearing the mark OPTIGARD in the Philippines. x x x

“II.

The trademark GUARD being applied for registration by respondent-applicant is confusingly similar to the trademark OPTIGARD, as to be likely, when applied to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

“5. The trademark GUARD of respondent-applicant Consumer Care Products Inc. is confusingly similar with the registered OPTIGARD of Opposer Syngenta Participations AG since:

- a. The dominant feature of both marks, i.e., GUARD/GARD, is almost identical. Visually therefore respondent-applicant’s mark GUARD is susceptible to be mistaken or confused with opposer’s trademark OPTIGARD.
- b. Respondent-applicant’s and opposer’s marks also sound the same when pronounced due to the almost identical word GUARD.
- c. Both marks are in plain block letters. Neither are in color. Hence, the similarity between these marks is even pronounced or enhanced.

x x x

“10. The reasoning in the McDonald’s case (supra) applying the Dominancy Test is relevant in the instant case. The dominant feature of Opposer’s mark OPTIGARD, which is

GARD, is almost identical to respondent-applicant's mark GUARD both visually and phonetically. Hence, the use and registration of the mark GUARD will create confusion, mistake and deception in the minds of the purchasing public.

"III.

The goods covered by the respondent-applicant's mark GUARD are identical to opposer's goods such that respondent-applicant's use thereof will most likely cause confusion in the minds of the purchasing public.

"11. Opposer's mark OPTIGARD and respondent-applicant's mark GUARD cover identical goods under International Class 5.

Opposer's mark OPTIGARD covers:

"Insecticides":

While respondent-applicant's mark GUARD covers:

"Insecticides":

The goods being identical, they are sold, marketed and/or found in the same channels of business and trade, thus compounding the likelihood of confusion. Hence, when placed side-by-side in sales countries, display cabinets, and racks along the aisle in stores and warehouses where they are sold, buyers and consumers will definitely be confused to find the two almost identical products, with the same brand and for the same goods.

"IV.

Opposer's mark OPTIGARD is registered in numerous countries around the world. Hence, in accordance with the Intellectual Property Code of the Philippines, it is considered an internationally well-known mark.

12. Opposer is the owner/registrant of many registration of the trademark OPTIGARD around the world under International Class 5, more particularly for "insecticides", among other goods, including an International Registration, and registrations in countries such as Argentina, Australia, Brazil, Canada, Chile, China, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, European Union, Guatemala, Honduras, Hong Kong, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Nicaragua, Panama, Peru, Philippines, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, United States of America, Venezuela, Vietnam, and Zimbabwe. x x x

"13. Opposer extensively sells and distributes its products around the world. The products are exported and/or sold in USA, Japan, Malaysia, and Singapore.

"14. By virtue of Opposer's prior registration and use of the trademark OPTIGARD in the Philippines, and its prior registration and ownership, wide use and extensive promotion of these trademarks around the world, said trademarks have therefore become distinctive of the goods and business of opposer Syngenta Participants AG.

"15. In the recent case of Sehwan, Inc. and Benita's Frites, Inc. vs. In-N-Out Burger, Inc. (G.R. No. 171053, October 15, 2007), the Supreme Court declared that the disputed mark therein is an internationally well-known mark on the basis of 'registrations in various countries around the world and its comprehensive advertisements therein', to wit:

x x x

“16. In the aforecited case, the disputed mark IN-N-OUT BURGER was not even a registered mark in the Philippines. Nonetheless, the Supreme Court upheld its right to trademark protection. Opposer’s mark OPTIGARD being world-renowned and registered and used in the Philippines, unquestionably must, all the more, be protected from respondent-applicant’s threatened registration of the confusingly similar mark GUARD. No less than the intellectual Property Code sets out the preferential protection when it states that registration of well-known marks in the Philippines can preclude registration of marks even with respect to goods or services that are not similar to its registered use, to wit:

x x x

“17. In view of the foregoing facts and evidence, and in accordance with the explicit of law and international convention, and pursuant to the foregoing jurisprudence, Opposer’s mark OPTIGARD clearly qualifies as internationally well-known marks and must be accorded protection under Philippine law.

“V.

Respondent-applicant obviously intends to trade on the goodwill of the opposer.

“18. A boundless choice of words, phrases and symbols is available to a person who wishes to have a trademark sufficient unto itself to distinguish its products from those of others. There is no reasonable explanation therefore for respondent-applicant to use the word GUARD in its mark when the field for its selection is so broad. Respondent-applicant obviously intends to bank on the goodwill of opposer and pass off its products as those of opposer.

x x x

“20. In view of all the foregoing, the registration and use of the trademark GUARD by respondent-applicant will deceive and/or confuse purchasers into believing that respondent-applicant’s goods and/or products bearing the trademark OPTIGARD emanate from or are under the sponsorship of opposer Syngenta Participants AG in the Philippines and around the world. The registration and use of the trademark GUARD by respondent-applicant will therefore diminish the distinctiveness and dilute the goodwill of opposer’s trademark.”

The Opposer’s evidence consists of the following:

1. Exhibit “A” - certified true copy of Certificate of Pesticide Registration No. 011600-5514 issued by the Fertilizer and Pesticide Authority;
2. Exhibit “B” - certified true copy of Certified of Product Registration No. HSR-5055 issued by the Bureau of Food and Drugs;
3. Exhibit “C” -product packaging of goods bearing the mark OPTIGARD (box);
4. Exhibits “C” to “C-7” - promotional materials and print advertisements of OPTIGARD;
5. Exhibits “D” to “D-10” - copies of purchase orders and invoices of products bearing the mark OPTIGARD;
6. Exhibit “E” -European Trademark Certificate of Registration No. 003110095 issued by the European Community;
7. Exhibit “F” -European Trademark Certificate of Registration No. 003110095 issued by the European Community;
8. Exhibit “G” -Swiss Trademark Certificate of Registration No. 509128 issued by the Swiss Federal Institute of Intellectual Property; and
9. Exhibit “H” -legalized Affidavit-Testimony of witness Mike Dammann

On 22 May 2009, the Respondent-Applicant filed its Verified Answer alleging, among others, the following:

“5. Respondent-applicant applied the mark “GUARD” with the Intellectual Property Philippines on January 19, 2007 with Application No. 4-2007-000591 under Intellectual Class 5. xxx

“6. That Respondent-applicant begs to disagree that its mark, “GUARD” is confusingly similar to Opposer’s mark “OPTIGARD”. The mark “GUARD” applied for registration by Respondent-applicant is entirely and unmistakably different. The dissimilarities between the two marks become conspicuous, noticeable and substantial enough to matter especially in the light of the following variables that must be factored in, to wit:

- a. Opposer’s trademark reads and sounds as “optigard” while Respondent-applicant’s trademark reads and sounds “GUARD”;
- b. Records will show that the letters used in the mark “GUARD” are all capitalized and in bold letters while the mark “optigard” (as appearing in the attached promotional materials and packaging of Opposer) uses small letters.
- c. Even assuming that what was registered by opposer with the Intellectual Property Philippines are in capitalized letters as that of Respondent-applicant’s mark, it cannot be denied that Opposer’s mark visually consists of eight (8) letters, while that of Respondent-applicant is only five (5) letters.

With the foregoing comparison of the two marks “optigard” and “GUARD”, it should be pointed out that the two are different in many aspects: shape of letters, number of letters, size, spelling, pronunciation and general appearance which overall features of each prevent or render nil the possible confusion on the mind of the purchaser as to the nature and source of good bearing said marks; that the pictorial effect and appeal to the eye is so prominent and clearly dissimilar that the marks of one cannot be mistaken to that of the other.

We have noted that the trademark of Opposer is ‘optigard’ not GARD. If what the opposer had applied for registration is the mark GARD, than there may somehow be confusion as the mark GARD and GUARD would sound identical and the same. So when it is spoken there is a lot of difference in sound and identity between the mark ‘optigard’ and ‘GUARD’.

“8. As time advances, and in line with and attuned to the needs of a present-day trade and commerce, radical changes have been made lately in the jurisprudence of the Trademark Law especially in the field of confusing similarity. The following Supreme Court rulings on Trademarks were declared not confusingly similar to each other and should be taken into consideration in view of the glaring dissimilarities of the two marks; ‘ATUSSIN’ and ‘PERTUSSIN’ (Etepha vs. Director of Patents, et al., Vol. 16, SCRA, pp. 495-496); ‘ALASKA’ and ‘ALACTA’ (Mead Johnson & Co. vs. N.V.J. van Dorp. Ltd., L-17501, April 27 1963, 7 SCRA 768); ‘SULMETINE’ and ‘SULMET’ (American Cyanamid Co. vs. Director of Patents, et al., L-23954, April 29 1977, 76 SCRA, p. 568); and ‘TANGO’ and ‘TANGEE’ (George Lo Luft Co., Inc. vs. Ngo Cuan, L-21915, December 17, 1966), ‘STYLESTIC MR. LEE’ and ‘LEE’ (G.R. No. 100098. December 29 1995 Emerald Garment Manufacturing Corporation, petitioner, vs.CA) noting with significance that the conflicting marks are used for the same class of goods.

“9. In Emerald Garment Manufacturing Corporation v. Court of Appeals, (G.R. No. 100098. December 29, 1995) The Supreme Court stated that in determining whether trademarks are confusingly similar, jurisprudence has developed two kinds of tests, the Dominancy Test and the Holistic Test. In its words:

‘In determining whether colorable imitation exists, jurisprudence has developed two kinds of tests -the Dominancy Test in Asia Brewery, Inc. v. Court of Appeals and other cases and the Holistic Test developed in Del Monte Corporation v. Court of Appeals and its proponent cases.

xxx xxx xxx

As its title implies, the test of dominancy focuses on the similarity of the prevalent features of the competing trademarks, which might cause confusion or deception and thus constitutes infringement.

xxx xxx xxx

.... If the competing trademark continuous the main or essential or dominant features of another, and confusion and deception as likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest as effort to imitate. [CO Neilman Brewing Co. v. Independent Brewing Co., 191 F., 489, 495, citing Eagle White Lead Co., vs. Pflugh (CC) 180 Fed. 579]. The question at issue in cases of infringement of trademarks is whether the use of the marks involved would be likely to cause confusion or mistakes in the mind of the public or deceive purchasers. (Auburn Rubber Corporation vs. Hanover Rubber Co., 107 F. 2d 588,... ...)

xxx xxx xxx

On the other side of the spectrum, the holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity.”

xxx xxx xxx

In similar determining whether the trademarks are confusingly similar, a comparison of the words is not the only determinant factor. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in. The discerning eye of the observer must focus not only on the prominent words but also on the other features appearing in both labels in order that he may draw his conclusion whether one os confusingly similar to the other.

“Applying the foregoing rules to the present controversy and taking into account the factual circumstances of this case, the trademarks involved should be looked into as a whole and in so doing, the Respondent-applicants mark ‘GUARD’ is not confusingly similar to Petitioners trademark ‘optigard’.

“Although in its label the letters ‘C’, ‘A’, ‘R’, and ‘D’ appears in the Respondent-applicant’s mark, the mark should be considered as a whole and not in a piecemeal. The dissimilarities between the two marks ‘optigard’ and ‘GUARD’ become conspicuous, noticeable and substantial enough to matter especially in the light of the following variables that must be factored in:

First, insecticide is not ordinary household items like soap, soy sauce or catsup which are of minimal cost. Insecticides are not inexpensive. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion, then, is less likely. x x x

Second, in line with the foregoing discussion, more credit should be given to the ‘ordinary purchaser’. Cast in this particular controversy, the ordinary purchaser is not the ‘completely unwary consumer’ but is the ‘ordinarily intelligent buyer’ considering the type of product involved.

“10. The Supreme Court has ruled that the issue of confusing similarity between trademarks is resolved by considering the distinct characteristics of each case. In the present controversy, taking into account the foregoing unique factors and dissimilarities there would be no sufficient ground to cause deception and confusion tantamount to infringement.

“The fact is that, when compared, the two trademarks are entirely different to each other considering that it does not have similarity in sound when read, it has different presentation.

Thus, the overall impression created is that the two marks are not deceptively and confusingly similar to each other. Clearly, petitioner did not violate any trademark law that Opposer is alleging.

“11. The Verified Notice of Opposition should be dismissed considering that the copy received by the respondent-applicant bears no signature of the counsel/s representing the alleged Opposer. Attached is the copy of the Verified Notice of Opposition received by the Respondent-applicant as Exhibit ‘4’. The same being unsigned, the Verified Notice of Opposition is considered a mere scrap of paper and therefore the said Verified Opposition is now considered filed out of time.”

The Respondent-Applicant submitted the following pieces of evidence:

1. Exhibit “1” - application for the registration of the mark GUARD;
2. Exhibit “2” - label submitted to the IPP for the mark GUARD;
3. Exhibit “3” - Acknowledgement Receipt of the Application for Registration;
4. Exhibit “4” - page 14 of the Verified Notice of Opposition; and
5. Exhibit “5” - Affidavit of Adela Marzan.

During the preliminary conference on 26 August 2009, only the Opposer’s counsel appeared. Upon motion of the Opposer, the Respondent-Applicant was declared to have waived its right to submit Position Paper. On 24 September 2009, Order No. 2009-1445 was issued directing the Opposer to file its Position Paper, which the Opposer filed on 08 October 2009.

The issues to be resolved in this case are the following:

1. Whether the opposition complies with the requirements under the Regulations on Inter Partes Proceedings;
2. Whether the Opposer’s mark is deemed well-known; and
3. Whether the Respondent-Applicant should be allowed to register the mark OPTIGARD in its favor.

On the first issue, Rule 7, Section 2(b) of the Regulations on Inter Partes Proceedings, as amended, states:

b) Notice of opposition. -The notice of opposition shall be in writing and verified by the opposer or any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon.” [Emphasis supplied.]

The records support the Opposer’s allegation that the Verified Notice of Opposition is fully compliant with the substantial and formal requirements. The opposition submitted was verified by Mr. Mike Dammann, the duly authorized representative of the Opposer and the person who knows the facts, which was duly authenticated by the Philippine Consular Office in Basel, Switzerland.

The Respondent-Applicant’s contention that the opposition should be dismissed for being an unsigned pleading as it bears no signature of the Opposer’s counsel is untenable. While there was no signature of the Opposer’s counsel, the opposition cannot be considered as an unsigned pleading because the Verification and Certification was properly signed by the Opposer’s authorized representative and authenticated by Philippine Consular Office in Switzerland.

With respect to the second issue, Sec. 123.1 (e) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”), provides:

SEC. 123. Registrability. -123.1 A mark cannot be registered if it:

x x x x

(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 section 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;

Corollary thereto, Rule 102 of the Trademark Regulations sets forth the criteria in determining whether a mark is a well-known mark, to wit:

- (a) the duration, extent and geographical area of any use of the mark, particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs exhibitions, of the goods and/or services to which the mark applies;
- (b) the market share, in the Philippines and in other countries, and/or services to which the mark applies;
- (c) the degree of the inherent or acquired distinction of the mark;
- (d) the quality-image or reputation acquired by the mark;
- (e) the extent to which the mark has been registered in the world;
- (f) the exclusivity of registration attained by the mark in the world;
- (g) the extent to which the mark has been used in the world;
- (h) the exclusivity of use attained by the mark in the world;
- (i) the commercial value attributed to the mark in the world;
- (j) the record of successful protection of the rights in the mark;
- (k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and
- (l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his mark is a well-known mark.

The Opposer submitted the Certificates of Registration of the mark OPTIGARD in Europe, Switzerland, World Intellectual Property Office (WIPO) under the Madrid Protocol³ and some promotional materials and print advertisements⁴. This Bureau finds these insufficient to declare the mark well-known under the aforementioned rule.

Going now to the main issue, it must be emphasized that the essence of trademark registration is to give protection to the owner of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the article to which it is affixed, to secure to him, who has been instrumental in bringing into a 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

³ See Exhibits "E", "F" and "G".

⁴ See Exhibit "C" to "C-7".

fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his products.⁵

Thus, Section 123.1 (d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”), states that 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;”

Records show that at the time the Respondent-Applicant filed its trademark application on 19 January 2007, the Opposer has an existing trademark registration (No. 4-2005-011674) for the mark OPTIGARD. The Opposer’s registered mark covers insecticides, the same goods on which the Respondent-Applicant will use or uses the mark GUARD. The question now is: Does the competing marks resemble each other that confusion or deception or mistake is likely to occur?

The competing marks are shown below for comparison:

OPTIGARD

GUARD

Opposer’s Mark

Respondent-Applicant’s Mark

It cannot be denied that there is similarity in the marks. The Respondent-Applicant’s GUARD mark is practically identical to the second syllable “GARD” in the Opposer’s OPTIGARD mark. When placed side by side, the eye is drawn to word “GARD” and “GUARD”.

The determinative factor in a contest involving registration of trademark is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of the mark would likely cause confusion or mistake on the part of the buying public. The law does not require that the competing marks must be so identical as to produce actual error or mistake. It is sufficient that the similarity between the two marks is such that there is possibility of the older brand mistaking the newer brand for it. If the competing trademark contains the main or essential or dominant features of another by reason of which confusion and deception are likely to result, then infringement takes place; and that duplication or imitation is not necessary, a similarity of the dominant features of the trademark would be sufficient.⁶

Colorable imitation does not mean such similitude as amounts to identity. Nor does it require that all the details be literally copied. Colorable imitation refers to such similarity in form, content, words, sound, meaning, special arrangement, or general appearance of the trademark or trade name with that of the other mark or tradename in their over-all presentation or in their essential, substantive and distinctive parts as would likely mislead or confuse persons in the ordinary course of purchasing the genuine article.⁷

5 *Pribhdas J. Mirpuri v. Court of Appeals*, G.R.No. 114508, 19 November 1999, citing *Etepha v. Director of Patents*, 16 SCRA 495.

6 *Philippine Nut Inc. v. Standard Brands Incorporated et al.*, 65 SCRA 575; *Co Tiong Sa vs. Director of Patents*, 94 Phil I citing *viz Clarke vs. Manila Candy Co.* 36 Phi I 100

7 *Emerald Garments Manufacturing Corporation vs. Court of Appeals*, G.R.No.100098. December29, 1995. 8G.R. No.78325 ,25January 1990

Considering that the competing marks are used on identical goods, that is, insecticides, it would readily give the impression and connotation that they are one and the same or one is just a variation of the other. It is likely that the purchasing public would associate the product of the Opposer with those of the Respondent-Applicant and *vice versa*.

In *Del Monte Corporation v. Court of Appeals*⁸, the Supreme Court stated that:
"It has also been held that it is not the function of the court in cases of infringement and unfair competition to educate purchasers but rather to take their carelessness for granted, and to be ever conscious of the fact that marks need not be identical. A confusing similarity will justify the intervention of equity. The judge must also be aware of the fact that usually a defendant in cases of infringement does not normally copy but makes only colorable changes. Well has it been said that the most successful form of copying is to employ enough points of similarity to confuse the public with enough points of difference to confuse the courts."

As the registered owner of the mark OPTIGARD since 20039, Opposer is entitled to the exclusive right to use it and prevent others from using a mark that resembles its mark as to be likely to deceive or cause confusion. Being a business competitor, Respondent-Applicant's introduction of identical products bearing the confusingly similar mark GUARD would cause a likelihood of confusion to the buying public.

WHEREFORE, premises considered the instant opposition to Trademark Application Serial No. 4-2007-000591 is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2007-000591 be returned together with a copy of this DECISION to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 26 July 2010.

NATHANIEL S. AREVALO
Director, Bureau of Legal Affairs
Intellectual Property Office

⁸ See Exhibits "E" to "G".