



CHARTERED FOREX, INC. and
FOREX CARGO (PHIL), INC.,
Opposer,

IPC NO. 14-2010-00174
Opposition to:

- versus -

Appln. Serial No. 4-2009-004760
Date Filed: 14 May 2009
TM: "EASY FOREX READY
TRADE LOGO"

EASY FOREX LTD.,
Respondent-Applicant.

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Decision No. 2012- 19

DECISION

CHARTERED FOREX, INC.¹ and FOREX CARGO (PHIL), INC.² ("Opposers") filed on 17 August 2010 an opposition to Trademark Application No. 4-2009-004760. The application, filed by EASY FOREX, LTD.³ ("Respondent-Applicant"), covers the mark "EASY FOREX READY TRADE LOGO" for use on "*cash and currency exchange transactions; providing cash and currency exchange transactions via Global communications network; currency exchange information services, providing currency exchange information via a global communications network; agencies for brokerage of securities trading in overseas securities markets and of transactions on commission of overseas market securities*" under Class 36 of the International Classification of Goods.

The Opposers allege, among other things, that the Respondent-Applicant's mark is confusingly similar to the Opposers' registered "FOREX" marks and is, thus, not registrable under Rep. Act No. 8293 also known as the Intellectual Property Code of the Philippines ("IP Code"). This was denied and refuted by the Respondent-Applicant in its Verified Answer filed on 24 January 2011, arguing that the products/services covered by the competing marks are different from each other.⁴

Should the Respondent-Applicant's trademark application be allowed?

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 of his product.⁵ Thus, Sec. 123.1 (d), of the IP Code provides 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:

¹ A foreign corporation duly organized and existing under the laws of the Commonwealth of Virginia, United States of America, with principal office and place of business at 1207 First Street, Alexandria, Virginia, U.S.A.

² A corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal place of business at 32 Santan Street, Brgy. Fortune, Marikina City.

³ A company organized under the laws of Cyprus with business address at 1 Griva Digenis Street, Kriel Court, 5th Floor, 3035 Limassol, Cyprus.

⁴ The Opposer's evidence are marked as Exhibits "A" to "1", while the Respondent-Applicant's, as Exhibits "1" to "8" (inclusive).

⁵ See *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.

- (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 14 May 2009, the Opposers have an existing registration for the mark "FOREX" in the Philippines under Reg. No. 4-2003-009852 issued on 24 October 2003. As shown below, the competing marks are not identical:

Forex

easy  forex
ready.trade

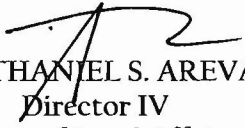
The Opposers' mark is composed of one word, while the Respondent-Applicant's mark is a composite mark consisting of several words and a white circle within a green square. The only resemblance between the competing marks is the word "forex".⁶ But while the word "forex" is prominent in the Respondent-Applicant's mark, confusion or deception is unlikely to occur. This is so because the services covered by the Respondent-Applicant's mark are different from the Opposers'. The Opposers' business, including the remittance of dollars, is essentially transporting goods from one place or location to another. This function finds no similarity to the complexities of currency exchange transactions and information services and securities trading.

This Bureau finds the Opposers' claim that the services covered by the Respondent-Applicant's mark is within its normal potential expansion, self-serving. There is no evidence that the Opposer's have even considered venturing into the Respondent-Applicants in the area of currency exchange and information services and securities trading. And, assuming *in arguendo* that the Opposers decide to do so, the mark "FOREX" shall be considered generic or, at the least, descriptive. A generic or descriptive word in relation to the goods or services it is used or attached as a trademark or service mark cannot be appropriated or registered for exclusive use. The word "FOREX" is widely recognized or accepted to mean "foreign (currency) exchange".

WHEREFORE, premises considered, the instant Opposition is hereby DISMISSED. Let the file wrapper of Trademark Application No. 4-2009-004760 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 February 2012.


Atty. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

⁶ The "filewrapper" of the Respondent-Applicant's trademark application shows that said party disclaims exclusive use of the words FOREX and Trade apart from the mark.