



ANHEUSER-BUSCH INBEV S.A.,
Opposer,

-versus-

ICONIC BEVERAGES INC.,
Respondent-Applicant.

x-----x

IPC No. 14-2009-00221

Opposition to:

Appl. Serial No. 4-2008-011278

Date filed: 17 September 2008

TM: "SAN MIGUEL PREMIUM

ALL MALT- BEER & LABEL
DESIGN"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 - 81 dated April 30, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 30, 2012.

For the Director:


Atty. MARLITA VALLESTERO-DAGSA
Hearing Officer, BLA

CERTIFIED TRUE COPY

SHARON S. ALCANTARA
Records Officer II
Bureau of Legal Affairs, IPO



ANHEUSER-BUSCH INBEV S.A.,	}	IPC No. 14-2009-00221
<i>Opposer,</i>	}	Opposition to:
	}	Appln. Serial No. 4-2008-011278
-versus-	}	Date Filed: 17 September 2008
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ICONIC BEVERAGES INC.,	}	TM: SAN MIGUEL PREMIUM
<i>Respondent-Applicant.</i>	}	ALL MALT-BEER & LABEL DESIGN
x-----x		Decision No. 2012- 81

DECISION

ANHEUSER-BUSCH INBEV S.A. ("Opposer")¹, filed on 08 September 2009 an Opposition to Trademark Application No. 4-2008-011278. The application filed by ICONIC BEVERAGES INC. ("Respondent-Applicant")², covers the mark "SAN MIGUEL PREMIUM ALL MALT-BEER & LABEL DESIGN" for use on "beer" under Class 32 of the International Classification of Goods³.

The Opposer alleges among others, the following:

IV
 GROUNDS IN SUPPORT
 OF THIS OPPOSITION

"15. The Opposer's STELLA ARTOIS trade dress and mark qualifies as an internationally well-known mark entitled to protection under Article 6bis of the Paris Convention in relation to Article 16 (2) of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) which provides:

x x x

which are implemented by Section 123.1 (e) of the Intellectual Property Code that declares:

x x x

"16. It is well-settled that in determining whether a trademark is well-known, the following factors or a combination of them may be considered:

x x x

"17. The Opposer's STELLA ARTOIS trade dress and mark are well-known worldwide, in that:

1 A corporation organized and existing under the laws of Belgium with principal address at Grand-Place 1, 1000 Brussels, Belgium.
 2 A corporation organized and existing under the laws of the Philippines with principal address at 40 San Miguel Avenue, Mandaluyong City.
 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.

"17.1 The Opposer has used the mark worldwide since 1926 and such use has been continuous, exclusive and substantial.

"17.2 The Opposer has registrations in more than five hundred countries, including in the Philippines.

"17.3 The Opposer has spent significant sums of money annually in worldwide marketing and promotional activities of its STELLA ARTOIS trade dress and beer product. The Affidavit of Mr. Philippe Vandeuere, the Legal Director, Brands and Innovation of the Opposer, showing the efforts undertaken by the Opposer to promote its STELLA ARTOIS trade dress and beer product and the market share of the Opposer's STELLA ARTOIS beer product in various countries is hereto attached as ANNEX "C".

"17.4 As a result of the Opposer's extensive use, marketing and promotional activities of its STELLA ARTOIS trade dress and beer product, the Opposer's STELLA ARTOIS beer product and its concomitant trade dress has acquired a high degree of distinctiveness and is well-known internationally. The STELLA ARTOIS beer product is undoubtedly identified by the general consuming public as a high-quality, premium beer product originating from the Opposer, which comes in the highly distinctive STELLA ARTOIS trade dress.

"17.5 To date, the Opposer's STELLA ARTOIS beer product is being sold and distributed in more than eighty (80) countries worldwide, including the Philippines.

"18. The registration of the Respondent-Applicant's mark is not only contrary to Section 123.1 (e) of the Intellectual Property Code, but is also a violation of the Philippine's commitment to an international treaty.

"19. The Respondent-Applicant's mark to be used on its beer product is a colorable imitation of the Opposer's trade dress for the latter's STELLA ARTOIS beer product such that prospective purchasers of the Opposer's beer products, familiar with the trade dress of the Opposer but without an exact and detailed recollection of it, when confronted with the Respondent-Applicant's mark, will have a mistaken belief that what they are purchasing is the beer product of the Opposer or that the same is sponsored or approved by or originates from the Opposer, when in reality, it does not.

19.1 The registration of the Respondent-Applicant's mark will permit the Respondent-Applicant to trade on the enviable international reputation and tremendous goodwill of the Opposer's business, the cornerstone of which is the Opposer's STELLA ARTOIS beer product all to the detriment and damage of the Opposer.

"20. In determining whether there is confusingly similarity between the two marks, the marks in their entirety as they appear in their respective labels must be considered in relation to the goods on which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on other features appearing on both labels in order that he may draw his conclusion whether one is confusingly similar to the other.

"21. Applying the above-mentioned test to the issues in this instant case, it is at once evident that the Respondent-Applicant's mark is undoubtedly confusingly similar to the Opposer's STELLA ARTOIS trade dress and beer product such that the simultaneous sale of the Opposer's and Respondent-Applicant's identical products, *i.e.*, beer products, which flow and are promoted through the same channels of trade, will inevitably exacerbate confusion or mistake in the minds of the public.

"22. The instant application of the Respondent-Applicant is a clear indication of the Respondent-Applicant's intent to appropriate as its own mark, the trade dress of the Opposer's STELLA ARTOIS beer product. The Respondent-Applicant's creative and product development team is surely aware of the Opposer's world-famous STELLA ARTOIS trade dress and beer product. It is without question that the Respondent-Applicant's creative and product development team is more imaginative than to simply copy a world-famous trade dress for a beer product, namely, the Opposer's STELLA ARTOIS.

"23. Reproduced below are the Opposer's and Respondent-Applicant's respective beer products to show that indeed, the contending products as they presently appear, are confusingly similar and will indubitably deceive the beer drinking public in particular and the Filipino consuming public in general, viz:



"24. Taken as a whole, the trade dress of Respondent-Applicant's beer product is, even at first glance, strikingly similar to that of Opposer's STELLA ARTOIS beer product.

"24.1 The Opposer's and the Respondent-Applicant's beer products are both contained in green bottles of identical size and shape.

"24.2 The labels of both products employ the same color combination, *i.e.*, red, white and gold, are similar sizes and use identical devices.

"25. Human memories, even of discriminating purchasers, are not infallible. Any difference in the Opposer's and the Respondent-Applicant's trade dress, however slight, does not alter the overall impression that the trade dress of the Opposer and that of the Respondent-Applicant are confusingly similar, whether viewed side by side or separately.

The Opposer's evidence consists of copies of certificates of registrations and applications for registration of the mark STELLA ARTOIS, samples of Opposer's marketing and promotional materials, affidavit of Philippe Vandeuken and copy of special power of attorney.⁴

⁴ Annexes "A" to "D" of the verified notice of opposition.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 06 October 2009. The Respondent-Applicant, however, did not file an Answer.

This Bureau noted that the Verification and Certification of non-forum shopping attached to the notice of opposition was signed by an associate of CESAR C. CRUZ AND PARTNERS LAW OFFICES, supposedly the attorney-in-fact of the Opposer. However, the Special Power of Attorney ("SPA") executed and signed by Philippe Vandeuren, purportedly, the Legal Director for Brands and Innovation of herein Opposer, authorizing CESAR C. CRUZ AND PARTNERS LAW OFFICES to represent and to sign for and on behalf of the Opposer the verification and certification of non-forum shopping⁵ was not accompanied by a Board Resolution or Secretary's Certificate establishing his legal personality or authority to act on behalf of Opposer Company. Moreover, the SPA is a mere photocopy.

It is well settled that it is obligatory for the one signing the verification and certification against forum shopping on behalf of the principal party or the other petitioners that he/she has the authority to do the same.⁶ If the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors.⁷ If the certification against forum shopping signed by a person on behalf of a corporation, is unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation, the same shall be sufficient ground to dismiss the case.⁸

But even if this Bureau considers the aforementioned Verification and Certification of non-forum shopping valid, the instant opposition should still be dismissed.

The Opposer anchors its case on Section 123.1 (e) of the Intellectual Property Code which provides that a mark cannot be registered if it 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.⁹ The Opposer claims that the Respondent-Applicant's mark to be used on its beer product is a colorable imitation of the Opposer's world-famous STELLA ARTOIS trade dress and beer product.

The competing marks are reproduced below for comparison:



STELLA ARTOIS



Opposer's marks

Respondent-Applicant's mark

⁵ Annex "D".

⁶ Fuentabella vs. Rolling Hills Memorial Park, G.R. No. 150865, 30 June 2006.

⁷ Supra.

⁸ Mediserv, Inc. vs. Court of Appeals, et al., G.R. No. 161368, 05 April 2010.

⁹ Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector 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.



The Respondent-Applicant's mark sought to be registered is the word "SAN MIGUEL PREMIUM ALL MALT-BEER & LABEL DESIGN"¹⁰. On the other hand, the Opposer's registered mark is "STELLA ARTOIS". Obviously, the marks are not identical. They are totally different in spelling and pronunciation such that when spoken, one does not sound like the other. Even the lettering or font utilized by both are different. The Respondent-Applicant's mark is written in white small gothic font with elaborate serifs in the letters "S" and "M" inside a narrower rectangle design while the Opposer's is printed in white large bold letters inside a wider rectangle design. The feature in the Opposer's mark that draws the eyes and the ears are the words "STELLA ARTOIS", while in the Respondent-Applicant's mark, the words "SAN MIGUEL". This alone, negates the possibility of mistake or confusion. The distinction between the marks, visually and as to sound is very clear.

This Bureau also noted that aside from the logo of the manufacturers which are prominently printed in their respective bottles and labels, there are words or phrases that appear in the Respondent-Applicant's product which are absent in the Opposer's, such as "expertly brewed beer", "premium all-malt". Conversely, the Opposer's product has the phrases "premium lager beer", "belgium's original beer", and "imported from belgium", which do not appear in the Respondent-Applicant's. These phrases can be considered in the nature of descriptive terms that can be appropriated by anyone.

This Bureau finds untenable the Opposer's issue regarding the alleged similarity of the green bottles of identical size and shape as well as the labels of the same size and color combination, *i.e.*, red, white and gold, and identical devices employed in the parties' beer products. The obvious distinction between the words "STELLA ARTOIS" and "SAN MIGUEL", is sufficient for the consumers to tell the difference between the two products. An ordinary purchaser would not be misled that the products bearing the mark SAN MIGUEL came from the Opposer.

¹⁰ The title of the mark subject of the instant opposition is SAN MIGUEL PREMIUM ALL-MALT BEER AND LABEL DESIGN. However, the exclusive right to use the following words is disclaimed by the Respondent-Applicant: "ALL-MALT", "BEER", "EXPERTLY BREWED", "PREMIUM" and "SINCE 1890". Hence, what is actually sought to be registered is SAN MIGUEL AND LABEL DESIGN.

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Moreover, there is no evidence that the Opposer has monopoly over the color or shape of its bottle bearing the "STELLA ARTOIS" mark by virtue of an industrial design registration. The Court's opinion in *Asia Brewery Inc. v. Court of Appeals* is relevant, to wit:

"Being of functional or common use, and not the exclusive invention of any one, it is available to all who might use it within the industry. Nobody can acquire any exclusive right to market articles supplying simple human needs in containers or wrappers of the general form, size and character commonly and immediately used in marketing such articles."¹¹

While indeed the competing marks are used on beers, the attention which the ordinary purchaser would give in buying these products should be considered. Applying by analogy the case of *Philip Morris, Inc. et al. v. Fortune Tobacco Corporation*, the Court held:

"When we spoke of an 'ordinary purchaser', the reference was not to the 'completely unwary customer' but to the 'ordinarily intelligent buyer' considering the type of product involved.

"It cannot be over-emphasized that the products involved are addicting cigarettes purchased mainly by those who are already predisposed to a certain brand. Accordingly, the ordinary buyer thereof would be all too familiar with his brand and discriminating as well. We, thus, concur with the CA when it held, citing a definition found in *Dy Buncio vs. Tan Tiao Bok*, that the 'ordinary purchaser' in this case means 'one accustomed to buy, and therefore to some extent familiar with, the goods in question.'¹²

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.¹³ This Bureau finds that the Respondent-Applicant's mark sufficiently serves this function.

WHEREFORE, premises considered, the instant Opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2008-011278 together with a copy of this Decision be returned to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 30 April 2012.


ATTY. NATHAMEL S. AREVALO
Director IV
Bureau of Legal Affairs 

¹¹ *Supra*.

¹² G.R. No. 158589, 27 June 2006.

¹³ *Pribhdas J. Mirpuri vs. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.