ANHEUSER-BUSCH, INC., Opposer, **-versus-** **VIRGILIO L. MALANG,** Respondent- Applicant.	**IPC No. 14-2011-00140** Opposition to: Appln. Serial No. 4-2010-006970 Filing Date: 29 June 2010) **TM: "BUDDY LIGHT VITAMIN BEER"**

NOTICE OF DECISION

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Pasig City

VIRGILIO L. MALANG
Respondent-Applicant
8 Adelfa Street, Tahanan Village
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GREETINGS:

Please be informed that Decision No. 2014 - 150 dated June 02, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 02, 2014.

For the Director:

Atty. EDWIN DANILO A. DATIING
Director III
Bureau of Legal Affairs

ANHEUSER- BUSCH, INC.,
Opposer,

- versus -

VIRGILIO L. MALANG,
Respondent-Applicant.
x----------x

IPC No. 14-2011-00140
Opposition to:

Appln. Serial No. 4-2010-006970
(Filing Date: 29 June 2010)
TM: **"BUDDY LIGHT VITAMIN BEER"**

Decision No. 2014- 150

DECISION

ANHEUSER-BUSCH, INCORPORATED, ("Opposer")[1] filed an opposition to Trademark Application Serial No. 4-2010-006970. The application, filed by VIRGILIO L. MALANG, ("Respondent-Applicant")[2], covers the mark "BUDDY LIGHT VITAMIN BEER" for "*beer*" under Class 32 of the International Classification of Goods or Services.[3]

The Opposer alleges the following:

"1. The Respondent-Applicant's application for the registration of the mark BUDDY LIGHT VITAMIN BEER is contrary to Section 123.1 paragraph (d) and paragraph (e) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") which prohibits the registrations of a mark that:

> (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; (Emphasis supplied)
>
> (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 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.

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1 A corporation of the State of Missouri, U.S.A., with principal offices located at One Busch Place, St.., Louis Missouri, U.S.A.
2 With address at 8 Adelfa St., Tahanan Village, Parañaque City, Philippines.
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 canceled in 1957.

In support of its opposition, the Opposer submitted a certified true copy of Philippine trademark registration No. 4-2007-011462 for "BUD" marked as Exhibit "A".

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant. However, the Respondent-Applicant did not file an answer.

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 out 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.4 This purpose is not served by the co-existence in the market of the mark applied for registration by the Respondent-Applicant with the Opposer's.

In this regard, Section. 123.1 paragraph (d) of the Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date in respect of the same goods or services or 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 his trademark application on 29 June 2010, the Opposer has already an existing Trademark Registration (No. 4-2007-011462) for the mark BUD, obtained on 24 March 2008 and covers "*beer*" under Class 32.

But, are the competing marks, depicted below, confusingly similar?

BUD

Opposer's mark *Respondent-Applicant's mark*

The Respondent-Applicant appropriated the word "BUD" which comprises the Opposer's mark. While he added the letters "DY" to the word "BUD", this did not diminish the likelihood of confusion, or even deception. The likelihood of confusion subsists notwithstanding the font-style employed and the presence of the words "*light*", "*vitamin*" and "*beer*" which because of their meanings or context in relation to the goods involve, required the Respondent-Applicant to disclaim. It is emphasized that confusion

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

cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other.[5]

Because the competing marks cover "beer", consumers are likely to assume that BUDDY LIGHT VITAMIN BEER is merely a variation of BUD, and that the "beer" products originate or provided by one party alone or the parties themselves are connected or associated with one another. The likelihood of confusion would subsists not only on the purchaser's perception of the goods but on the origins thereof as held by the Supreme Court.[6]

The field from which a person my select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of letters are available, the Respondent-Applicant had come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.[7]

Thus, this Bureau finds that the Respondent-Applicant's trademark application is proscribed under Sec. 123.1(d) of the IP Code.

WHEREFORE, premises considered, the opposition is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2010-006970, be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 02 June 2014.

ATTY. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

5 *Societe Des Produits Nestle, S.A. v. Court of Appeals*, G.R. No. 112012, 4 Apr. 2001, 356 SCRA 207, 217.
6 *Converse Rubber Corp. v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987
7 *American Wire and Cable Co. v. Director of Patents, et al.*, G.R. No. L-26557, 18 Feb. 1970