CROWN MELBOURNE LIMITED, Opposer, **-versus-** **CROWN LINK PROPERTIES, INC.,** Respondent-Applicant.	}	**IPC No. 14-2008-00151** Opposition to: Appln. Serial No. 4-2007-006289 Date filed: 18 June 2007 TM:**"CROWN "**

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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 – 200 dated October 15, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 15, 2012.

For the Director:

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

CROWN MELBOURNE LIMITED,
Opposer,

-versus-

CROWN LINK PROPERTIES, INC.,
Respondent-Applicant.
x----------x

IPC No. 14-2008-00151
Opposition to:

Appln. Serial No. 4-2007-006289
(Filing Date: 18 June 2007)
TM: "CROWN"

Decision No. 2012-200

DECISION

CROWN MELBOURNE LIMITED ("Opposer")[1] filed on 07 July2008 an opposition to Trademark Application Serial No. 4-2007-006289. The application, filed by CROWN LINK PROPERTIES, INC. ("Respondent-Applicant")[2], covers the mark "CROWN" for use on "*building signage and leasing of commercial spaces/offices*" under Class 35 of the International Classification of goods.[3]

The Opposer alleges, among other things that the registration of the mark CROWN in favor of the Respondent-Applicant violates Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer, the mark applied for registration by the Respondent-Applicant is confusingly similar to the marks CROWN, CROWN CLUB, CROWN TOWERS and CROWN DEVICE which were registered in its favor. The Opposer points out that the goods indicated in the subject trademark application are related to those covered by the Opposer's registered marks, particularly "hotel, restaurants, casinos, bars, entertainment services and its advertisement and promotions under Class 35, 39, 41 and 43. Also, the Opposer contends that its registered marks are well-known marks and thus, entitled to protection under Article 6bis of the Paris Convention and Articles 16.2 and 16.3 of the TRIPS Agreement.

The Opposer's evidence consists of the following:

1. Philippine registrations for the marks CROWN, CROWN CLUB, CROWN DEVICE, and A CROWN COMPOSED OF DOTS;
2. copies of certificates of registration in other countries;
3. certificate of company registration;
4. Special Power of Attorney;

[1] With address at 8 Whiteman Street, Southbank,Victoria 3006, Australia.

[2] With address at No. 214 D. Tuazon Street, Quezon City.

[3] The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

5. print-out of publication of the Respondent-Applicant's mark;
6. affidavit of Janette Anne Kendall; and
7. samples of advertisements and promotional items.[4]

On 05 January 2009, the Respondent-Applicant filed its Answer alleging that the Opposer has neither the legal or factual basis that will be damaged by the registration of the Respondent-Applicant's mark. According to the Respondent-Applicant, its Articles of Incorporation and By-Laws were duly registered with the Securities and Exchange Commission on 23 November 2000 under the name "Crown Link Properties, Inc." for the purpose or objective of owning, using, improving, developing, subdividing, selling, exchanging, leasing and holding "*for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures*". It points out that it has existing trademark registrations, No. 66755 issued on 08 December 1998 for the mark "CROWN PLASTIC WITHIN A RECTANGULAR DEVICE" covering goods under class 16 and with recorded date of first use on 01 Feb. 1971, and No. 4-2003-010372 issued on 25 Dec. 2005 for the mark "THE CROWN COLLECTION".

The Respondent-Applicant also contends that the Opposer's CROWN marks in the Philippines were all filed only in 2007, while the goods and services covered by the Respondent-Applicant's CROWN mark were already part of the primary purposes of its incorporation in 2000. Citing also Sec. 123.1 (d) of the IP Code, the Respondent-Applicant argues that the Opposer should not have been issued trademark registrations.

To support its defense of its trademark application, the Respondent-Applicant submitted as evidence:

1. copies of the Philippine registration in the Principal Register of the mark CROWN PLASTIC WITHIN A REGULAR DEVICE;
2. sales invoices dated 2001 and 2006;
3. its Articles of Incorporation and By-Laws;
4. Philippine registration of the mark THE CROWN COLLECTION;
5. photos of the use of the mark CROWN;
6. and various business licenses and permits from 1986 to 2006.[5]

After the conduct and termination of the preliminary conference on 22 June 2009, the parties filed their respective position papers.

Should the Respondent-Applicant be allowed to register the mark CROWN?

It is 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 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

[4] Marked as Exhibits "A" to "EE", inclusive.
[5] Marked as Exhibits "1" to "6", inclusive.

assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against and sale of an inferior and different article of his products.[6] Thus, Sec. 123.1 (d) of the 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 closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that the mark applied for registration by the Respondent-Applicant is identical to the Opposer's mark CROWN covered by Reg. No. 4-2007-005757. The trademark application which ripened into Reg. No. 4-2007-005757 was filed on 06 June 2007. The Respondent-Applicant filed its trademark application only on 18 June 2007. The question now is: Are the goods or services indicated in the Respondent-Applicant's trademark application similar or closely related to the Opposer's goods and services?

The Respondent-Applicants' services are *"building signages and leasing of commercial spaces/offices"*. As a building signage, the mark of course is attached to or placed in a conspicuous part of, the building making it visible to the public, thus serving its objective or purpose. On the other hand, commercial offices/spaces leased are parts of buildings or properties or groups thereof that have names or dealt in using brands or trademarks. These names or trademarks are most likely visible or purposely made known to the public through building or property signages and other media to accurately identify or pinpoint the location or address of the commercial/office spaces leased. Like other trademarks, building and property signages are meant to indicate the owners and/or builders of the real properties.

The Opposer's goods and services (under classes 39, 41 and 43) are among other things, hotels, restaurants, casinos, bars, theaters, entertainment services, facilities for various events/activities, and the advertisement and promotion thereof. Its mark CROWN, therefore, is naturally and logically visible through signages so that the public will know that it offers the said services. This mark is also the name seen and heard via different media in relation to advertisement and promotion. A customer therefore, may commit mistake in assuming that a building or structure bearing the mark CROWN is owned by or connected to the Opposer when in fact it belongs to the Respondent-Applicant. As held by the Supreme Court:[7]

> Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

There is also the likelihood that information, assessment, perception or impression, whether

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[6] See *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114509, 19 Nov. 1999.

7 *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.

good or positive on the services of the Respondent-Applicant may unfairly be cast upon or attributed to the Opposer and *vice-versa.*

The Respondent-Applicant may have used and registered trademarks that include the word CROWN as a feature prior to the Opposer's, but these registrations cover goods that are not similar or totally unrelated to the Opposer's. Reg. No. 66755 issued on 08 December 1998 covers "notebooks, fillers, folders, diaries, address books, ID cards and holders, name card holders, plastic envelope and cases, photo albums", while Reg. No. 4-2003-010372 covers "*diary books, telephone books, address books, school notebooks, folders, envelopes, picture frames, painting reproductions, writing instruments, show room name*".

WHEREFORE, premises considered, the instant opposition is hereby SUSTAINED. Let the filewrapper of Trademark Reg. No. 4-2007-006289 be returned, together with a copy of this Decision, to the Bureau of Trademark for information and appropriate action.

SO ORDERED.

Taguig City. 15 October 2012.

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