



KENSONIC, INC.,
Opposers,

-versus-

AVESCO MARKETING CORP.,
Respondent -Applicant.

X-----X

} IPC No. 14-2010-00118
} Opposition to:
} Appln. Serial No. 4-2009-007107
} Date Filed: 20 July 2009
} TM: "CROWN WITH DEVICE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 67 dated March 05, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 05, 2014.

For the Director:

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



KENSONIC, INC.,
Opposer,

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AVESCO MARKETING CORPORATION,
Respondent-Applicant.

} **IPC NO. 14-2010-00118**

} Opposition to:

} Appln. Ser. No. 4-2009-007107

} Date Filed: 20 July 2009

} Trademark : **CROWN**

} **WITH DEVICE**

x-----x } Decision No. 2014- 67

DECISION

KENSONIC, INC., (Opposer)¹ filed on 8 June 2010 an opposition to Trademark Application Serial No. 4-2009-007107. The application, filed by **AVESCO MARKETING CORPORATION** (Respondent-Applicant)², covers the mark “CROWN & DEVICE”, for use on “alarm bell, smoke detector, revolving light, passive infrared alarm, burglar alarm, light activated alarm, emergency light, stand alone gas leak detector” under Class 09 of the International Classification of Goods³.

The Opposer alleges among other things, that the registration of the mark CROWN & DEVICE is proscribed by Section 123.1 par. (d) of Rep. Act No. 8293, also known as the Intellectual Code of the Philippines (“IP Code”). According to the Opposer, it is the owner of the “CROWN” marks which are registered in the Philippines, namely: CROWN AND DEVICE, under Registration No. 4-2000-009608, issued on 5 April 2008 covering goods under classes 9, namely: “speakers, baffles, microphone and accessories thereof”; CROWN THE PROFESSIONAL CHOICE & LOGO under Registration No. 4-2005-007025 issued on 19 February 2007 covering goods under class 9, namely: “speakers, baffles, speaker accessories, amplifier, mixer, equalizer, VCD player, DVD player, tuner and tape deck”; CROWN & LOGO under Registration No. 4-2007-011904 issued on 10 March 2008 covering goods under class 9, namely: “TV wall bracket, TV booster speaker wire, car security devices, amplifier, DVD player, VCD player, tuner, equalizer, mixer, tape deck, headphone, speaker stand, cable wire, direct box signal balance, value kits, satellite stand, processor, phantom power supply, RCA jack, microphone jack, microphone wire, adaptor HDMI wire (high definition multi – video interfacing), speaker wire, digital video interfacing cable, crossover network, car speaker, television”; and CROWN AND LOGO under Registration No. 4-2008-006010

¹ A corporation organized and existing under Philippine law with address at Lot 3 T.S. Sarino Subdivision, Real St., Pulang Lupa, Las Pinas City

² A corporation organized and existing under Philippine law with address at 810 Aurora Boulevard cor Yale St. Cubao, 1109 Quezon City

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

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issued on 13 October 2008, covering goods under class 9, namely: "computer cable, computer wire, storage device, portable/removable storage device, disk drives, optical drive, floppy disk drive, CRT monitor, LCD monitor, display monitor, processor, removable media, keyboard mouse and other pointing devices, computer case, ATX PSU, Memory card, network adaptors, imaging devices, system devices, storage controllers, universal serial bus controllers, sound controllers/ card video controllers, card display adapters, fan, computer accessories, portable computers, desktop computer, notebook computer, laptop computer, mobile phone, smart phone, music player, video player, PDA computer, floppy disk".

To support its Opposition, the Petitioner submitted as evidence the following:

1. Secretary's Certificate authorizing Nenita K. Tsang to sign verification;
2. Certification of the Intellectual Property Office of the Philippines that trademark registrations were issued to the Opposer;
3. Certificates of Registration issued to the Opposer for the CROWN marks;
4. Declarations of Actual Use of the CROWN marks;
5. Sales invoices issued to Avesco Marketing Corp. bearing reference numbers to CROWN products under the CROWN product manual;
6. Bill of Ladings, sales invoice issued to customers bearing reference numbers to CROWN products under the CROWN product manual;
7. Articles of Incorporation of the Opposer;
8. General Information Sheet pertaining to the Opposer;
9. Affidavits from several entities attesting that the Opposer supplies "CROWN products";
10. Various news articles advertising and campaigning for "CROWN products";
11. Affidavit of Mr. Tsang Wing Kuen;
12. Freight invoices of Opposer's products such as speakers, equalizers etc.;
13. Pictures of "CROWN products" in a document entitled "CROWN HI-FI SPEAKER SYSYTEM"; and
14. Brochure entitled "CROWN The Professional Choice"⁴

This Bureau served upon Respondent-Applicant a "Notice to Answer" on 15 July 2010. The Respondent-Applicant, however did not file an Answer.

Should the Respondent-Applicant be allowed to register the trademark CROWN WITH DEVICE?

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

⁴ Marked as Exhibits "A" to "Y" inclusive of submarkings

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.⁵ 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.

The records show that at the time the Respondent-Applicant filed an application for the mark CROWN WITH DEVICE on 20 July 2009, the Opposer already has existing trademark registrations in the Philippines, particularly, for CROWN AND DEVICE, under Registration No. 4-2000-009608, issued on 5 April 2008; CROWN THE PROFESSIONAL CHOICE & LOGO under Registration No. 4-2005-007025, issued on 19 February 2007; CROWN LOGO under Registration No. 4-2007-011904, issued on 10 March 2008; CROWN AND LOGO under Registration No. 4-2008-006010, issued on 13 October 2008. These registrations cover goods under class 09 (electronic devices, appliance and accessories), and which are similar and/or closely related to those indicated in the Respondent-Applicant's trademark application.

The competing marks, as depicted below, are practically identical :



Opposer's marks

Respondent-Applicant's mark

There may be differences between the marks insofar as the devices are concerned; but this is of no moment. One mark is likely to be assumed as a variation of the other. It is likely that the consumers will associate and confuse the Respondent-Applicant's mark with the Opposer's registered marks because the marks are used on similar and/or closely related goods.

In fact, the Opposer submitted evidence that it had supplied its products to the Respondent-Applicant bolstering the inference that the latter is a copycat.

The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the million of terms and combination of letters are available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁶


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

⁶ American Wire and Cable Co. v. Director of Patents, et al. G.R. No. L-26557, 18 Feb. 1970

WHEREFORE, premises considered, the instant Opposition to Trademark Application Serial No. 4-2009-007107 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 5 March 2014.



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