ROVIO ENTERTAINMENT LTD., Opposer, **-versus-** **FERNANDO G. MONTEVERDE,** Respondent- Applicant.	}	**IPC No. 14-2012-00517** Opposition to: Appln. Serial No. 4-2012-750002 Date Filed: 05 January 2012 **TM: "ANGRY BEE"**

NOTICE OF DECISION

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FERNANDO G. MONTEVERDE
Respondent-Applicant
2138 A. Luna Street, Pasay City

GREETINGS:

Please be informed that Decision No. 2014 - 118 dated April 28, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 28, 2014.

For the Director:

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

ROVIO ENTERTAINMENT LTD.,
Opposer,

-versus-

FERNANDO G. MONTEVERDE,
Respondent-Applicant.
x ---------- x

IPC No. 14-2012-00517

Opposition to Trademark
Application No. 4-2012-750002
Date Filed: 05 January 2012

Trademark: **"ANGRY BEE"**

Decision No. 2014- 118

DECISION

Rovio Entertainment[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-750002. The contested application, filed by Fernando G. Monteverde[2] ("Respondent-Appellant"), covers the mark "ANGRY BEE" for use on *"sporting goods namely: basketballs, baseballs, softballs, tennis balls, and baseball and softball bases; club head covers, golf tees, golf club shafts, golf divot repair tools and hand grips for golf clubs, lacrosse golf; skateboards, ice skates, in line skates, roller skates, hockey pucks, skateboards, ice skates, in line skates, roller skates, hockey pucks, weight for exercise and lifting, weight lifting belts, athletic supporter lacrosse ball bags, grip tape for bats, rackets and sticks, skis, ski binding and parts, volleyball game plaything; swimming accessories namely: kickboards and buoys for swimming recreational and training use; exercise mats, exercise ropes (jump ropes), exercise resistance bands, backboards, aerobic boxing gloves, archery, backgammon games balls for games, barbells, bill-hooks, mask, billiards cue tips, billiard cues, billiard markers, billiard table cushions, billiard tables, bladders of balls for games, building blocks (toys); sport and fitness accessories namely: tennis racket, badminton racket, shuttle cock, street hockey, field hockey, ice hockey"* under Class 28 of the International Classification of Goods[3].

The Opposer anchors its case on Sec. 123, subparagraphs (d) to (f), of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code")[4]. According to the Opposer, it is an entertainment

[1] A company duly organized and existing under the laws of Finland, with principal business address located at Keilaranta 17, 02150 Espoo, Finland.
[2] With address at 2138 A. Luna Street, Pasay 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 concluded in 1957.
[4] Section 123.1. A mark cannot be registered if it:

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media company and the creator of the "ANGRY BIRDS", which mark was registered in the Philippines under Trademark Registration No. 4-2011-005848 on 29 March 2012 covering goods/services under Classes 03, 09, 14, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 38, 41 and 43.

The Opposer contends that Respondent-Applicant's "ANGRY BEE" mark is confusingly similar to its mark and that the latter applied for registration in evident bad faith, with prior knowledge of the existing "ANGRY BIRDS" mark and with the intention to ride on its fame, established reputation and good will. It asserts that it used its well-known "ANGRY BIRDS" mark in the Philippines and in numerous other countries worldwide prior to and before the filing of Respondent-Applicant's application. Likewise, it avers that it has extensively promoted its mark and maintains websites at domain names www.rovio.com and angrybirds.com.

In support of the Opposition, the Opposer submitted the following as evidence:[5]

1. original and legalized affidavit of Mr. Mikael Hed, Opposer's Managing Director, and its attachments;
2. printout of the trademark details report of "ANGRY BIRDS" under Registration No. 4-2011-005848; and,
3. copies of trademark registration certificates for the "ANGRY BIRDS" mark in Colombia, Hong Kong, New Zealand, Mexico and World Intellectual Property Office (WIPO).

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 06 February 2013. The Respondent-Applicant,

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(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;

(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 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;

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use; x x x"

[5] Marked as Exhibits "B" to "D".

however, did not file an Answer. Accordingly, the Hearing Officer issued on 16 May 2013 Order No. 2013-762 declaring the Respondent-Applicant in default and the case submitted for decision.

Should the Respondent-Applicant be allowed to register the mark "ANGRY BEE" in its favor?

It is emphasized that 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.[6]

Records and evidence show that at the time the Respondent-Applicant filed its trademark application, the Opposer already has a trademark application for the mark ANGRY BIRD. The Opposer filed the application on 20 May 2011. The application matured into registration on 29 March 2012. Among the goods and services covered by the Opposer's trademark application/registration are those belonging to Class 28, namely:

> Games and playthings, namely, toys; plush toys; teddy bears; toy figures and playsets; action figures and accessories therefore; toy figures attachable to mobile phones; pencils or key rings; balls and balloons; yo-yos; toy vehicles; surfboards; snowboards; roller blades; ice skates; skateboards; building blocks (toys); board games; building games; dominoes; fishing tackle; flippers for swimming; flying discs(toys); automatic games; apparatus for electronic games other than those adapted for use with television receivers only; electronic game equipment for playing video games, namely, handheld units for playing video games other than those adapted for use with an external display screen or monitor; kites; marionettes; toy masks; mobile (toys); toy pistols; soap bubbles (toys);swimming pools (play articles); swings; pet toys; play articles for swimming, beach balls; amusement machines, automatic and coin operated; playing cards, confetti; radio-controlled toys; stand alone video output game machines; coin or counter operated arcade games; electronic hand-held units; non electric hand-held skill games; puzzles; paper hats, masquerade and halloween masks; toy banks; Christmas stockings; sling shots; gymnastic and sporting articles not included in other classes; decorations for Christmas trees; Christmas stockings.

These goods are similar and/or closely related to those indicated in the Respondent-Applicant's trademark application. The question is: are the competing marks, shown below, confusingly similar?

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[6] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, November 19, 1999.

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

The mark "ANGRY BIRDS" while consisting of two ordinary words in the English language ("angry" and "birds") is highly distinctive. "Angry", an adjective, evokes a strong emotional state and response. The idea, concept, or image of an excited, furious, or enraged animal is highly impressionable. Succinctly, the Opposer's mark functions more than a brand name in respect of its goods and services. "ANGRY BIRDS" are the main characters of the animation and games created and provided to the public by the Opposer. Corollarily, merchandise that carries animations, cartoons, games and fictional characters or figures appeal to the public's attachment to them. It is because of this attachment that sways them in buying such merchandise. Thus, owners of trademarks that consist of cartoon, animation or fictional characters extend their businesses to other goods and services.

Aptly, because "ANGRY BIRDS" is highly distinctive, another mark that:

1. consists of the word "angry", and the name of an animal with or without a device showing the physical representation thereof; and

2. used on goods or services similar and/or closely related to the Opposer's,

would likely create an impression that the mark is also owned or connected to the Opposer. The fact that the animal adopted by the Respondent-Applicant refers to an insect (a bee) and not to a bird is of no moment. Confusion 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 ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.[7] The consumers may assume that the Respondent-Applicant's goods originate from or sponsored by the Opposer or believe that there is a connection between the two, as in a

[7] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

trademark licensing agreement. Aptly, in Societe des Produits Nestle, S.A. vs. Dy.[8], the Supreme Court held:

> *...man 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist.'*

It is inconceivable that the Respondent-Applicant came up with the mark "ANGRY BEE" without having been inspired or motivated by an intention to imitate the Opposer's mark. As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.[9] In this instance, the Respondent-Applicant stands to get "free advertisement" of his goods.

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

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application No. 4-2012-750002 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 28 April 2014.

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

[8] G.R. No. 172276, 08 August 2010.
[9] American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.