SUYEN CORPORATION,	}	**IPC No. 14-2011-00289**
Opposer,	}	Opposition to:
	}	Appln. Serial No. 4-2010-009112
	}	Date filed:19 August 2010
-versus-	}	**TM: "TBYLUXE"**
	}	
LOI CRUZ,	}	
Respondent-Applicant.	}	
x----------		----------x

NOTICE OF DECISION

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Counsel for Opposer
7th Floor, The Phinma Plaza
39 Plaza Drive, Rockwell Center
Makati City

LOI D. CRUZ
Respondent-Applicant
219 Wilson Street
Greenhills, San Juan
Manila

GREETINGS:

Please be informed that Decision No. 2012 – **83** dated April 30, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 30, 2012.

For the Director:

Atty. PAUSI U. SAPAK
Hearing Officer, BLA

SUYEN CORPORATION,
Opposer,

- versus -

LOI CRUZ,
Respondent-Applicant.
x----------x

IPC No. 14-2011-00289
Opposition to:

Appln. Serial No. 4-2010-009112
Date Filed: 19 August 2010
TM: **TBYLUXE**

Decision No. 2012 - 83

DECISION

SUYEN CORPORATION, ("Opposer")[1] filed on 19 July 2011 an opposition to Trademark Application Serial No. 4-2010-009112. The application, filed by LOI CRUZ, ("Respondent-Applicant")[2], covers the mark "TBYLUXE" for use on "*jewelry namely costume jewelry, bracelets, necklaces, earrings, watches*" under Class 14, "*bags, handbags, shoulder bags, wallets*" under Class 18, "*clothing namely shirts, t-shirts, slacks, pants, socks, sweaters, jackets, visors, gloves, headwear, underwear, dress, undershirts, shoes, sandals, slippers, belts*" under Class 25, and "*boutique selling clothing, shoes, bags & fashion accessories*" under Class 35, of the International Classification of goods[3]

The Opposer alleges, among other things, that the Respondent-Applicant's mark is identical to and confusingly similar to its duly registered trademarks. According to the Opposer, the Respondent-Applicant's mark will mislead the public into believing that the products bearing the mark TBYLUXE are the same products marketed and sold by the Opposer or that the goods originated from the same source.

In support of its opposition, the Opposer submitted as evidence the affidavit, dated 18 July 2011 of Dale Gerald G. Dela Cruz, Group Brand Manager of the Opposer corporation; a Deed of Assignment, dated 02 June 2010, between Teg Bags Company, Inc. and the Opposer covering several trademark registrations; certified copy of Cert. of Reg. No. 4-2007-002067 for the mark "T LUXE & Device"; copy of Cert. of Reg. No. 4-2006-008492 for the mark "LUXE BLEND (STYLIZED)"; certified copy of Cert. of Reg. No. 4-2002-004767 for the mark "T-STUDIO"; certified copy of Cert. of Reg. No. 4-2006-010207 for the mark "T INSIDE A STANDING RECTANGULAR DESIGN"; certified copy of Cert. of Reg. No. 4-2007-002066 for the mark "LITTLE & DEVICE"; copy of Memorandum of Agreement between Teg Bags Company, Inc. and the Opposer, dated 02 June 2010; and photographs of

1 A corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with offices located at 2214 Tolentino Street, Pasay City.
2 Filipino, of legal age, with address at 219 Wilson Street, Greenhills, San Juan 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.

products bearing the Opposer's trademarks, including shoes, handbags, shoe boxes and of the "T store".[4]

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant and duly received on 08 September 2011. The Respondent-Applicant, however, did not file an Answer.

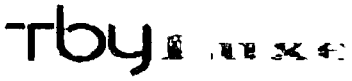
Should the Respondent-Applicant's trademark application be allowed?

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.[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 of if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application on 19 August 2010, the Opposer has existing trademark registrations for goods that are similar and closely related to those indicated in the Respondent-Applicant's application, to wit:

1. Reg. No. 4-2007-002067 for the mark T LUXE & Device covering "*ladies handbags,ladies clutch bags*" under class 18 and "*ladies shoes, ladies slippers*" under Class 25;
2. Reg. No. 4-2006-008492 for the mark LUXE BLEND (STYLIZED) covering "*men's and ladies denim pants, pants, slacks, shorts, trousers, jogging pants*" under class 25;
3. Reg. No. 4-2002-004767 for the mark T-STUDIO covering "*retail of ladies shoes, handbags and accessories*" under class 35;
4. Reg. No. 4-2006-010207 for the mark T INSIDE A STANDING RECTANGULAR DESIGN covering "*ladies handbags, ladies clutch bags*" under class 18 and "*ladies shoes, ladies slippers*" under class 25; and
5. Reg. No. 4-2007-002066 for the mark LITTLE & DEVICE for "*children bag*" under class 18 and "*children's shoes*" under class 25.

The question is: Is the Respondent-Applicant's mark:



[4] Exhibits "A" to "O", inclusive.
[5] *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.

identical to, or closely resembling the Opposer's marks (shown below) such that mistake, confusion or even deception is likely to occur?

LUXE

The determinative factor in a contest involving trademark registration is not whether the use of such mark would likely cause confusion or mistake on the part of the buying public. In short, to constitute an infringement of an existing trademark patent and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it[6].

This Bureau noticed that four of the Opposer's registered marks are variations of a mark which consists mainly of the capital letter "T". These marks are considered unique and highly distinctive as the letter "T" seems to have no meaning or connotation in relation to the Opposer's goods. Significantly, in one of these registered marks, the word "LUXE" is printed below or at the foot of the letter "T". Also, aside from the four "T" marks, the Opposer has a registered mark composed of the words "luxe" and "blend".

In this regard, both the capital letter "T" and the word "Luxe" are found in the Respondent-Applicant's mark. The letter "T" and the word "Luxe" essentially comprise the Respondent-Applicant's mark. While between the letter "T" and the word "Luxe", the Respondent-Applicant placed what appears to be the word "by", this is not sufficient to give the mark a character that is different from the Opposer's "T" marks. What impress the eyes and resonate in the ears are the letter "T" and the word "Luxe". 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 purchaser as to cause him to purchase the one supposing it to be the other[7].

Because the Respondent-Applicant's trademark application covers goods that are

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6 *American Wire and Cable Co. versus Director of Patents et al.*, (31 SCRA 544) G.R. No. L-26557, 18 Feb. 1970.
7 *Societe de Produits Nestle, S.A. v. Court of Appeals*, G.R. No. 11202, 04 April 2001, 356 SCRA 207, 217.

similar and closely related to the goods covered by the Opposer's trademark registrations, there is the likelihood of mistake, confusion or even deception as to the goods or products or with respect to the origins or manufacturers thereof are likely. Consumers may even assume that one mark is just a variation of the other and there is a connection or association between the two marks and/or between the contending parties themselves, when in fact there is none. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:[8]

> 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.

It is inconceivable for the Respondent-Applicant to have come up with the mark "TBYLUXE" without having been inspired by or motivated by an intention to imitate the Opposer's marks. It is highly improbable for another person to come up with an identical or nearly identical mark, which is unique and highly distinctive, for use on the same or related goods purely by coincidence. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the answered riddle is why, of the millions of terms and combination of letters and 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[9].

WHEREFORE, premises considered, the opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2010-009112 be returned, together with a copy of this Decision, to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 30 April 2012.

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

[8] See *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.
[9] See *American Wire and Cable Co. v. Director of Patents et.* al (SCRA 544), G.R. No. L-26557, 18 Feb. 1970.