SYNGENTA PARTICIPATIONS AG, Opposer, **-versus-** **ISAGRO S.P.A,** Respondent –Applicant.	}	**IPC No. 14-2011-00252** Opposition to: Appln. Serial No. 4-2011-001456 Date Filed: 09 February 2011 **TM: "AIRONE"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 98 dated April 07, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 07, 2014.

For the Director:

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

SYNGENTA PARTICIPATIONS AG,
Opposer,

-versus-

ISAGRO S.P.A,
Respondent-Applicant.
x ----------x

IPC No. 14-2011-00252

Appln. Serial No. 4-2011-001456
Filing Date: 09 February 2011
Trademark: **"AIRONE"**

Decision No. 2014 - 98

DECISION

SYNGENTA PARTICIPATIONS AG, ("Opposer")[1] filed an opposition to Trademark Application Serial No. 4-2011-001456. The application, filed by ISAGRO S.P.A ("Respondent-Applicant")[2], covers the mark "AIRONE" for use on "preparations for destroying vermin; fungicides, herbicides" under class 05 of the International Classification of Goods and Services[3].

The Opposer alleges among other things the following:

"1. The trademark AIRONE being applied for by respondent-applicant is confusingly similar to opposer's trademark APRON, as to be likely, when applied to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

"2. The registration of the trademark AIRONE in the name of respondent-applicant will violate Section 123.1, subparagraph (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, x x x

"3. The registration and use by respondent-applicant of the trademark AIRONE will diminish the distinctiveness and dilute the goodwill of opposer's trademark APRON.

"4. The registration of the trademark AIRONE in the name of respondent-applicant is contrary to other provisions of the Intellectual Property Code of the Philippines."

The facts are as follows:

"1. In the Philippines, opposer is the registrant of the trademark APRON, x x x

"2. By virtue of opposer's registration and prior use of the trademark APRON in the Philippines, said trademark has become distinctive of opposer's goods and business.

"3. The mark AIRONE of respondent-applicant is confusingly similar with the mark APRON of oppose Syngenta Participations AG: x x x

"4. Moreover, both trademarks cover similar and competing goods.

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1 A corporation duly organized and existing under the laws of Switzerland with business address at Schwarzwasldallee 215, 4058 Basel, Switzerland.

2 With registered address at Via Caldera 21, Fabbricato D-Ala 3, 20153 Milano, Italy.

3 The Nice Classification of goods and services is for registering trademark and service marks, based on a 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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Respondent-applicant's mark AIRONE covers:

'preparations for destroying vermin; fungicides, herbicides',

While opposer's mark APRON covers:

'fungicide for treatment of seeds'.

The goods being the same, they are sold, marketed and/or found in the same channels of business and trade, thus compounding the likelihood of confusion.

"5. A boundless choice of words, phrases and symbols is available to a person who wishes to have a trademark sufficient unto itself to distinguish its products from those of others. There is no reasonable explanation therefore for respondent-applicant to use the word AIRONE as its trademark when the field for its selection is so broad.

"6. The registration and use of the trademark AIRONE by respondent-applicant will deceive and/or confuse purchasers into believing that respondent-applicant's goods and/or products bearing the trademark AIRONE emanate from or are under the sponsorship of oppose Syngenta Participations AG, owner/registrant of the trademark APRON. This will therefore diminish the distinctiveness and dilute the goodwill of opposer's trademark."

The Opposer's evidence consists of the following

1. Exhibit "A" - Certificate of Registration No. 4-1996-109762D for trademark APRON issued by Intellectual Property Office Philippines;
2. Exhibit "B" - Worldwide trademark portfolio for the marks APRON and its variants;
3. Exhibit "C" - List of registered agricultural pesticide products as of 31 December 2007 from Fertilizer and Pesticide Authority (FPA) showing registration of APRON XL350;
4. Exhibit "D" - Certified true copy of status of application for pesticide registration by FPA;
5. Exhibit "E" to "E-1"- Certified true copy of invoice for APRON product sales;
6. Exhibit "F" - Photographs of APRON products;
7. Exhibit "G" to "G-3"- Duly notarized and legalized Board Secretary's Certificate to represent Opposer;
8. Exhibit "H" to "H-5"- Duly notarized and legalized Affidavit-Testimony of Mike Dammann; and,
9. Exhibit "I" - Syngenta AG's Full Year Results 2010;

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 02 january 2012. Respondent-Applicant however, did not file an answer. Thus, in Order No. 2012-1171, the Respondent-Applicant was declared in default and the case deemed submitted for decision.

Should the Respondent-Applicant be allowed to register the trademark AIRONE?

The instant opposition is anchored on Section 123.1 paragraph (d) of the IP Code which 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 mark as to be likely to deceive or cause confusion.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application on 09 February 2011, the Opposer has already an existing trademark registration for the mark APRON bearing Registration No. 4-1996-109762D issued on 28 April 2006 in the Philippines[4] and worldwide registration of its mark APRON covering the same classification of goods.[5] Moreover, Respondent-Applicant's product bearing the mark APRON are actually used and sold in Philippine market since the year 2011. Unquestionably, the Opposer's application, registration and use preceded that of Respondent-Applicant's.

The competing marks are hereby reproduced for examination:

APRON	**AIRONE**
Opposer's Trademark	Respondent-Applicant's Trademark

The contending marks are not identical, however it bear resemblance to each other due to the presence and positions of letters A, R, O and N which when pronounced in its entirety is sufficient to produce similar beginning and ending sounds. The visual and aural similarities are sufficient to reach a conclusion that there is the likelihood of confusion.

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.[6] Colorable imitation does not mean such similitude as amount to identify, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, context, words, sound, meaning, special arrangement or general appearance of the trademark or tradename with that of the other mark or tradename in their over-all presentation or in their essential substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article.[7]

In Marvex Commercial Co., Inc vs. Petra Hawpia[8], the Supreme Court highlighted the effect of aural similarities:

> "The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, vol. 1, will reinforce our view that 'SALONPAS' and 'LIONPAS' are confusingly similar in sound; 'Gold Dust' and 'Gold Drop'; 'Jantzen' and 'Jazz-Sea'; 'Silver Flash' and 'Supper-Flash'; 'Cascarete' and 'Celborite'; 'Celluloid'and 'Cellonite'; 'Chartreuse' and 'Charseurs'; 'Cutex' and 'Cuticlean'; 'Hebe' and 'Meje'; 'Kotex' and 'Femetex'; 'Zuso' and 'Hoo Hoo'. Leon Amdur, in his book 'TradeMark Law and Practice', pp. 419-421, cites, as coming within the purview of the idem sonans rule, 'Yusea' and 'U-C-A', 'Steinway Pianos' and 'Steinberg Pianos', and 'Seven-Up' and 'Lemon-Up'. In Co Tiong vs. Director of Patents, this Court unequivocally said that 'Celdura' and 'Cordura' are confusingly similar in sound; this Court held in Sapolin Co. vs. Balmaceda, 67 Phil.

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4 Exhibit "A" of Opposer.
5 Exhibit "B" of Opposer.
6 Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 112012, 04 April 2001, 356 SCRA 207, 217.
7 Emerald Garment Manufacturing Corp. V. Court of Appeals, G.R. No. 100098, 29 December 1995.
8 G.R. No. L-19299, 22 December 1966.

795 that the name 'Lusolin' is an infringement of the trademark 'Sapolin', as the sound of the two names is almost the same."

While the contending marks belong to different classification of goods, it appears that they are related in terms of the nature and purpose of the goods. The Opposer's mark APRON covers fungicide for treatment of seeds under class 1; whereas, Respondent-Applicant's AIRONE covers preparations for destroying vermin; fungicides and herbicides under class 5. They are both involved in the prevention and growth of fungi that damage plants, mildews and blights. These goods flow on the same channels of trade. Thus, it is likely that the consumers will have the impression that these goods or products originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:[9]

> 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. Hence, 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 stressed that the determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. 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.[10]

Accordingly, this Bureau finds 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 file wrapper of Trademark Application Serial No. 4-2011-001456 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 April 2014.

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

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9 Converse Rubber Corporation v. Universal Rubber Products Inc., et al., G.R. No. L-27906, 08 Jan. 1987.
10 American Wire and Cable Co. v. Director of Patents, et al., (31 SCRA 544) G.R. No. L-26557, 18 February 1970.